PUBLIC UTILITIES FORTNIGHTLY 25th ANNIVERSARY 1929-1954

Public Utilities

FORTNIGHTLY

Volume 54 No. 3 August 5, 1954

IMPACT OF INFLATION ON PUBLIC UTILITIES

A Symposium

« »

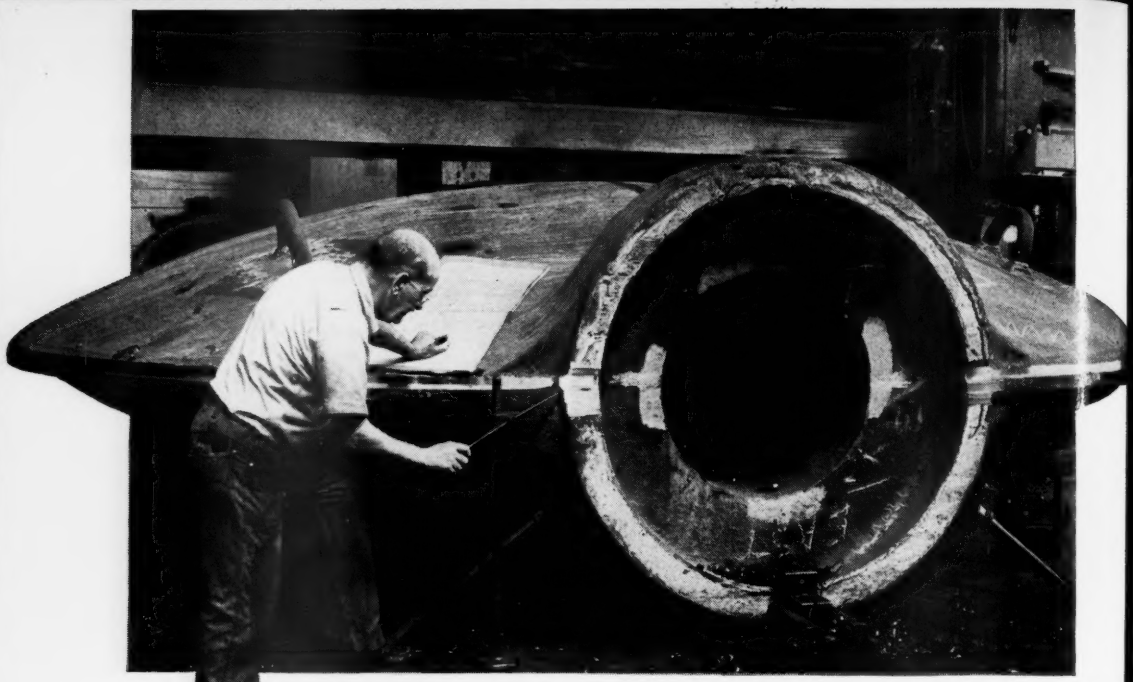
Techniques for Obtaining Depreciation Replacement Costs

C. F. Boake

« »

AEC Contract Stirs Debate on TVA

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS



This machinist is "miking" a disc for one of the largest butterfly valves ever built — 192" diameter. Newport News built 3 such valves, each weighing 446,000 lbs., for the Ross Power Plant, Skagit Project, Department of Light, City of Seattle, Washington. Designed for a water flow of 3,620 cu. ft. per sec., and a hydrostatic pressure of 290 psi., these valves were shop tested by Newport News at 450 psi. They are hydraulically operated with oil at 1,500 psi. pressure.

Birth of a **200-ton** Butterfl

This disc for a 16-foot butterfly valve reflects two basic advantages of Newport News fabrication...

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Avail yourself of the engineering talent, along with the specialized production techniques and the skill of Newport News craftsmen operating vast steel fabricating shops, five huge machine shops, drop forging and die facilities along with acres of brass, iron and steel foundries.

Let us bid on equipment for your present or future projects. If you are not familiar with the way Newport News can help you, write for our illustrated booklet entitled "Water Power Equipment" ... it's yours for the asking.

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FEATURE SECTIONS

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WHEN THERE HAD TO BE MORE POWER...

America's Electric Utilities Rose to

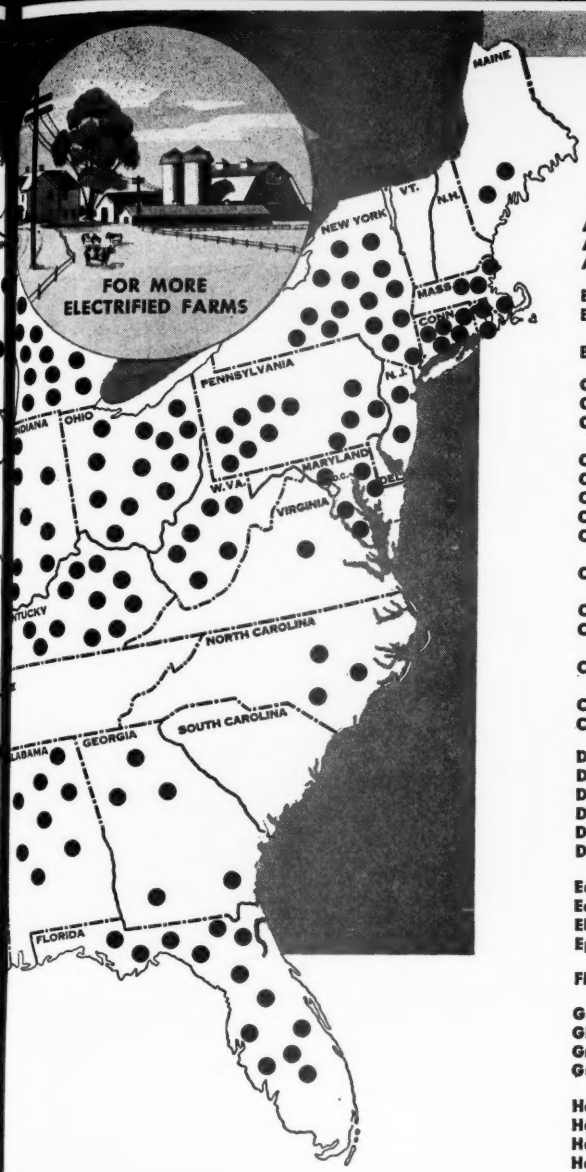
When the drums rolled for Korea in 1950, America's electric utilities were confronted, overnight, with a tremendous demand for more power. Vastly expanded production needed for war, the requirements of a fast-growing population, and continuation of the nationwide farm electrification program, all demanded power in greater quantities than ever before.

And the power that had to be produced was produced.

The magnitude of this accomplishment can best be gauged by the estimated number of kilowatts —29,500,000*—added to the nation's service lines by both steam and hydro in the past four years.

To help supply boilers for this additional power, B&W doubled its own manufacturing capacity and, as a glance at the map will show, was responsible during this period alone, for putting on the line more than 250 individual steam generating units in utility power plants across the country. These B&W Boilers alone have a capacity of more than 110,000,000 lb of steam per hour, serving a capacity of better than 13,000,000 kilowatts and a great number of additional units are still being fabricated and erected.

When there *had* to be more power, the nation's electric utilities rose to the challenge... made ad-



to the Challenge

ditional kilowatts available when and where they were needed. As it has done since the very first days of the power industry, B&W will continue its close cooperation with America's electric companies to help them meet the future demands of their great responsibility. The Babcock & Wilcox Company, Boiler Division, 161 East 42nd Street, New York 17, N. Y.

* Source: Edison Electric Institute

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Central Kansas Power Co.
Central Louisiana Electric Co.
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Central Power & Light Co.(Texas)
City Public Service Board, San Antonio, Tex.
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Consumers Public Power Dist.

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Detroit Edison Co.
Duquesne Light Co.
Dyersburg, Tenn., City of

East Palestine, O., City of
Eastern Shore Public Service Co.
El Paso Electric Co.
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Florida Power Corp.

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Grand Island, Neb., City of
Gulf Power Co.

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Herkimer, City of
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Imperial Irrigation Dist.
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Indianapolis Power & Light Co.
Iola, Kan., City of
Iowa Electric Light & Power Co.
Iowa Power & Light Co.
Iowa Public Service Co.
Iowa-Southern Utilities Co.

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Jersey Central Power & Light Co.

Kansas City, City of
Kentucky Utilities Co.
Kinston, N. C., City of

Lafayette, La., City of
Lake Superior District Power Co.
Lakeland, Fla., City of
Lansing, Mich., City of
Loup River Public Power Dist.

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Mississippi Power & Light Co.
Mississippi Valley Public Service Co.
Missouri Public Service Co.
Monongahela Power Company
Montana-Dakota Utilities Co.

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Tucson Gas, Elec. Lt. & Pwr. Co.

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West Texas Utilities Co.
Wilson, N. C., Town of
Wisconsin Power & Light Co.
Wisconsin Public Service Corp.
Worthington, Minn., City of
Wyandotte, Mich., City of

G-658

Pages with the Editors

WE are hearing a good deal these days about "attrition," meaning the claimed loss of original investment in utility properties due to the wearing away of the proportionate earning power due to inflation. Telephone, gas, and electric companies in various rate cases have been pressing arguments about the need for recognizing "attrition." But there has been stout resistance to the argument.

What should responsible utility executives do about the impact of inflation on the earnings of their companies? Should they seek a positive corrective measure, even though it means drastic changes in prevailing regulatory practice? Or should they go along with the trend in view of the practical difficulties and possible boomerangs which might be incurred in trying to alter the ground rules? Or is it possible to do *anything* about it, even assuming that inflation is here to stay and that existing utility investors, at least, will suffer through deterioration in the integrity of their investment?

ALL three viewpoints, in a general way, were most thoughtfully and forcefully presented at an executive conference of the American Gas Association at Lake Placid, New York, during mid-May. Some

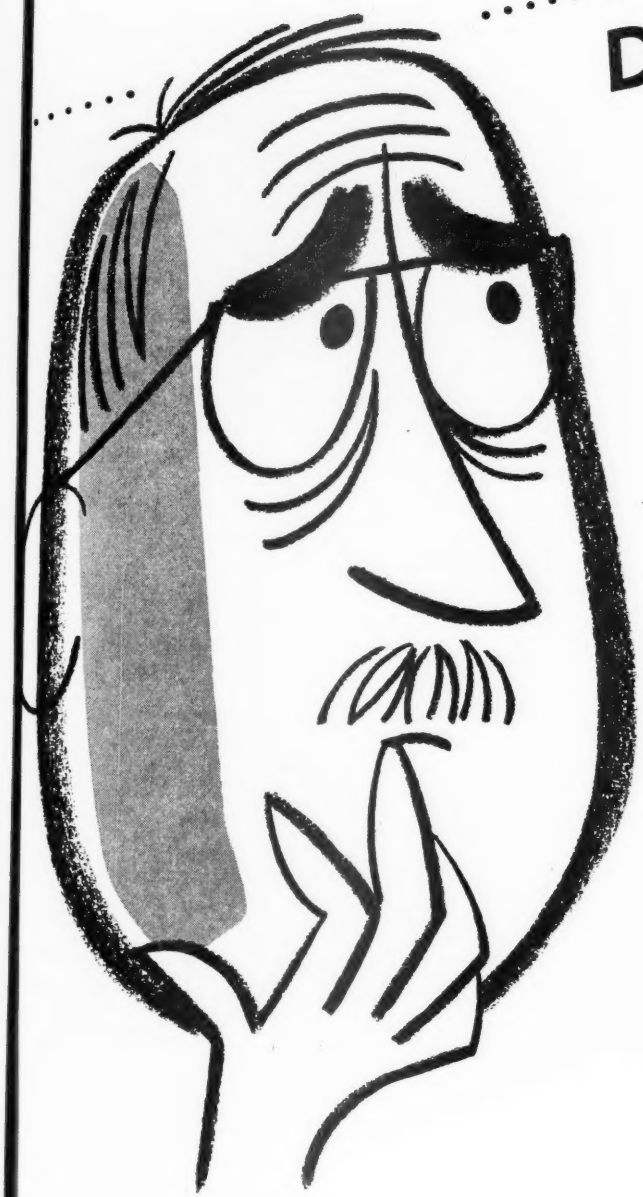
FRANK L. GRIFFITH

C. F. BOAKE

of these views and arguments from three executives in a panel discussion created such widespread interest that there have been requests for a restatement of the text in published form. Hence this 3-part symposium, which treats of the impact of inflation on utilities, by FRANK L. GRIFFITH, vice president and comptroller, The Peoples Gas Light and Coke Company; W. J. HERRMAN, vice president, Southern California Gas Company; and ROBERT E. GINNA, executive vice president, Rochester (New York) Gas & Electric Corporation.

WALTER J. HERRMAN has been considering the problem of public utility return for a long time. He is a graduate of the University of California (EE '22). He also taught engineering and economics at Louisiana State University. He joined the Great Western Power Company of California in 1924 and was engaged in analytical work in the investment field with M. H. Lewis & Company in 1929. In 1937 he became coauthor of a survey on rate of return with the research staff of the Federal Communications Commission, which was later published by the commission. Following subsequent service with the Theodore N. Gary interests, in the telephone field, MR. HERRMAN joined the old

Don't wonder!
Don't worry!



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If you're thinking about somebody or there's something you want to get settled . . . don't wonder, don't worry. Call Long Distance today and be sure.

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Commonwealth & Southern organization. After that he became identified with the Southern California Gas Company, of which he is now vice president.

* * * *

FRANK L. GRIFFITH graduated from Lake Forest College in Illinois, served with the Air Corps in World War I, and after his discharge in 1919 joined The Peoples Gas Light and Coke Company. In 1927 he was elected assistant secretary and assistant treasurer and in 1934 he became vice president and comptroller, the post which he still holds. MR. GRIFFITH takes an active interest in the work of a number of committees of the American Gas Association, principally those dealing with taxes, depreciation, and rates.

* * * *

ROBERT E. GINNA has spent thirty-one years in the utility business. Starting with the Brooklyn Edison Company as student engineer, he later served as consulting engineer for many utilities throughout the country. He joined his present organization, Rochester Gas & Electric Corporation, in 1934 and rose from departmental manager to executive vice president, responsible for the operations of the company. He has written many papers on utility management and operation.

* * * *

THE article on the need for obtaining depreciation replacement costs (beginning on page 137) comes from C. F. BOAKE, a registered engineer in Illinois,

ROBERT E. GINNA

WALTER J. HERRMAN

who tells us about the practical ways of demonstrating the expeditious methods for obtaining depreciated replacement costs of utility property accounts. This is a very useful article, covering one of the most important matters involving regulatory bodies and utility officers and other utility rate case parties. At the present time, there is an extensive discussion of the determination of reproduction cost in those jurisdictions where it is a required element of proof for a rate base.

MR. BOAKE interrupted his engineering course at the University of Cincinnati, to serve with the AEF in France during World War I. After his discharge and some experience in the transportation field, he took additional training at Northwestern University. He later became a consultant to the utility industry, specializing in rates, valuations, depreciation, financing, sufficiency of reserves, and investigations. He has been an officer or director of one or more utility companies continuously for twenty-five years. A recent assignment was the preparation and submission of the cost of reproduction, and such cost depreciated, of the electric and gas property of Commonwealth Edison Company on behalf of the engineering staff of the Illinois Commerce Commission.

THE next number of this magazine will be out August 19th.

The Editors

NOW, for travelling auditors*— a new, low-cost precision microfilm machine small enough to carry

Here, at last, is relief for the travelling auditor from the countless hours wasted in transcribing data. It's the new Film-a-record Model 8 — a machine which simply puts on 16mm microfilm the records containing information you want. It's fast and it's accurate with no chance of transcription errors.

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* or anyone else who requires portability in a microfilm camera.

Coming IN THE NEXT ISSUE

★

THE MASKS OF A PUBLIC UTILITY COMMISSIONER

Unlike a judge on the bench a public utility commissioner must fulfill several rôles in the course of a typical rate case. He must protect the consumer from exploitation in the form of excessive rates. He must protect the utility's investor so as to preserve the ability of the utility to serve. And he must also be the arbiter of rival claims concerning economic factors and financial requirements involved in the utility's operations. Leon Schwartz, chairman of the Pennsylvania Public Utility Commission, gives us a readable account of these different rôles of the public utility commissioner. These are the different "masks" which the commissioner must wear in the course of his regulatory duties.

THINGS ARE COMING THE INDEPENDENTS' WAY

With postwar growth, Los Angeles boasts the largest non-Bell phone service in the country. But everywhere the independents are growing, modernizing. They now serve two-thirds of the U. S. area, with one-sixth of the telephones. James H. Collins, author of business articles, gives us some interesting but comparatively little-known facts about the important stake which the independent telephone companies have in telephone service in the United States. This is one of the reasons why the independents have decided to publicize the scope and extent of their operations in popular magazines, through an organized advertising campaign now going on throughout the country.

POSTWAR AWARENESS OF INADEQUATE WIRING

It used to be said that demand for electric power in the United States doubles every seven years. It has grown somewhat faster than that, since the end of World War II. But the idea persists among residential customers that the same old wiring, some of it installed a generation ago, can continue without much change to carry the actual load. This fallacy is not only bad economy, but can be downright dangerous, in addition to blocking the electric utility's full opportunities for rendering adequate and satisfactory service. Howard J. Carswell, manager, publicity department, Guaranty Trust Company of New York, goes into the background of this peculiar anomaly and tells about steps being taken to overcome the safety dangers and other evil consequences of obsolescent wiring throughout the nation.

★

Also . . . ***Special financial news, digests, and interpretations of court and commission decisions, general news happenings, reviews, Washington gossip, and other features of interest to public utility regulators, companies, executives, financial experts, employees, investors, and others.***

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

HERBERT HOOVER
Former President of the United States.

"Every pressure group and every government agency wants economy for everybody else."

ROBERT E. WOOD
Former chairman of the board, Sears, Roebuck & Co.

"If capitalism is to survive it is up to our future business leaders to improve and perfect our system."

HARLEY L. LUTZ
Tax consultant, National Association of Manufacturers.

"The key to future economic advance and to the maintenance of employment, production, and income is capital formation."

WILLIAM RANDOLPH HEARST
Late publisher.

"States' rights—they are not merely an empty phrase. They are an essential part of our national rights and our personal rights."

ARTHUR H. MOTLEY
President, Parade Publication, Inc.

"The future we must have will come about only if there is complete understanding by everyone of how each segment of our economy contributes to the welfare of all."

CLARENCE B. RANDALL
Chairman of the board, Inland Steel Co.

"You can't understand the country's problems by taking your brief case home at night filled with plans for sales campaigns and technical literature about your own business."

H. L. DONOVAN
President, University of Kentucky.

"It has been said that the objectives of education and industry are identical. Both are interested in good citizenship, in serving society, in a better life—and both firmly believe in freedom."

deLESSEPS MORRISON
Mayor of New Orleans, La.

"Of all the forms of transportation in the country, only the railroads pay their own way. Great passenger terminals are built for the airlines, but they are paid for out of taxes. By contrast, the Union Passenger Terminal will be paid for, not by the government, but by the railroads of New Orleans."

A. J. G. PRIEST
Professor of law, University of Virginia.

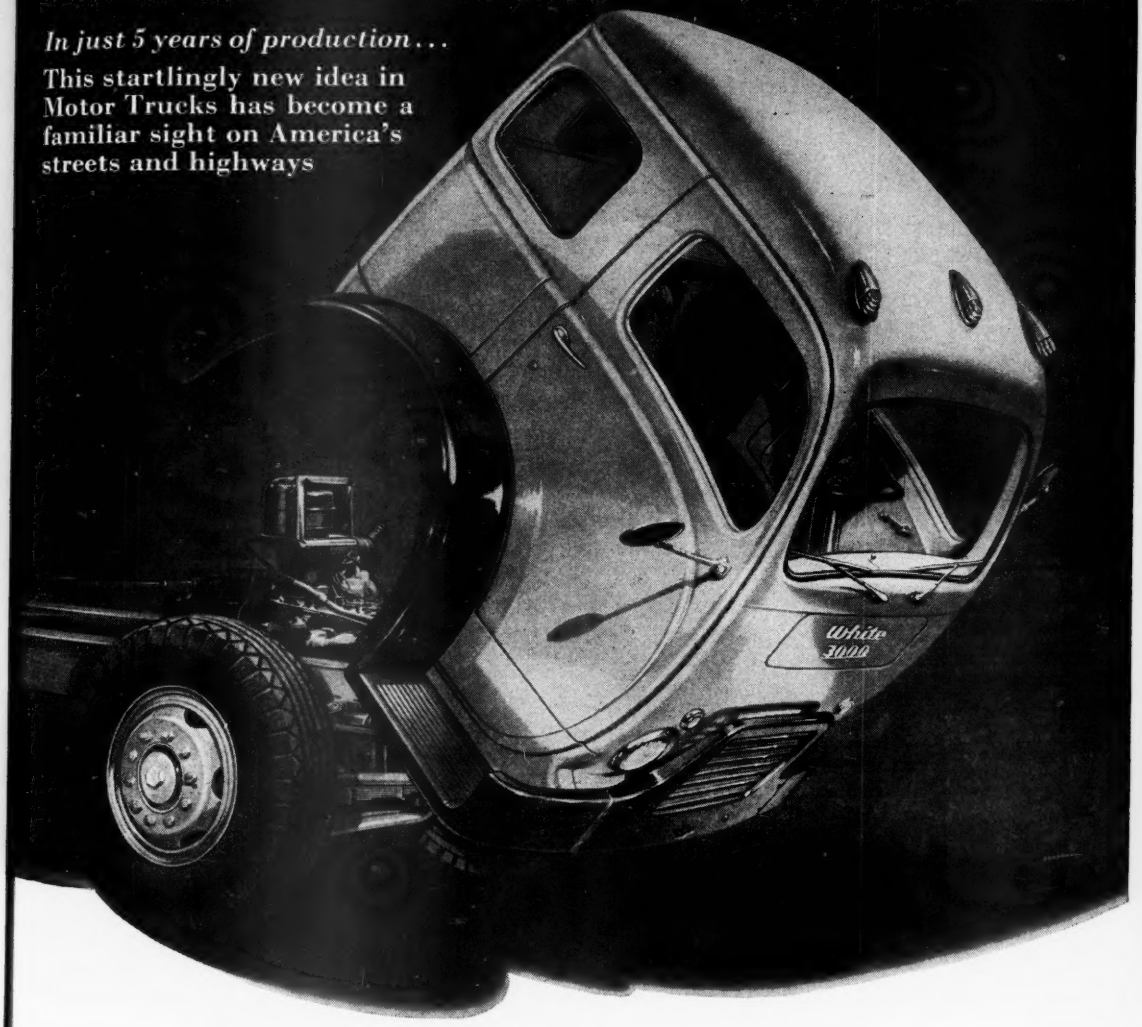
". . . what if New York state were in the business of selling gasoline, as Governor Dewey apparently wants to put it into the power business? And what if all new state highways were made available on a preference basis only to motorists who could display a not-more-than-ten-days-old receipt for a tankful of state gasoline? Rough, of course. But 'Honest Harold' was just as tough with the investor-owned electric utility industry."

Have you looked into

TOMORROW'S TRUCK TODAY?

In just 5 years of production...

This startlingly new idea in Motor Trucks has become a familiar sight on America's streets and highways



5 YEARS AGO The White Motor Company introduced an entirely new type of truck—completely functional—designed to reduce delivery cost because it could do more work per day or per mile. So new and different, other manufacturers thought the White 3000 of little consequence, at the time.

TODAY... just five years later... thousands of successful fleet owners have cost records to prove that the White 3000 reduces delivery costs spectacularly. The White Roll Call of owners of ten or more is published as unassailable proof of this fact.

If you have not had the White 3000 demonstrated in your service—to see for yourself its ability to cut your delivery time and costs—call your White Representative today.

THE WHITE MOTOR COMPANY

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For more than 50 years the greatest name in trucks

REMARKABLE REMARKS—(*Continued*)

W. C. MULLENDORE
Chairman of the board, Southern California Edison Company.

"I am sure of only one thing: that no one can predict with certainty the course of economic affairs in the uncertain period which lies ahead. We can all express our faith and hope that the foundations of America's economic strength are unimpaired and that all will be well."

BENJAMIN F. FAIRLESS
Chairman of the board, United States Steel Corporation.

"The world's key fortress of human liberty is America itself. So long as our freedom stands, the enemy cannot gain ultimate victory; but let it be undermined by the sappers—let it start crumbling beneath our feet—and soon there will be no corner left on earth where men can walk in dignity."

HAROLD QUINTON
President, Southern California Edison Company.

"The American people are learning that it [electric power] can be produced by the time-honored American system of free enterprise. . . . proponents of public power know full well that no government-managed enterprise can honestly compete with the investor-owned industry, but must be propped up by subsidies from tax-paying citizens."

HENRY B. DU PONT
Vice president, E. I. du Pont de Nemours & Company, Inc.

"Much of the discussion of trade between nations seems to presume that no aggressor will ever again arise to break the peace of the world. This assumption is comforting, but hardly realistic, because, unfortunately, aggressors do appear, and we must stand ready to defend ourselves. And, if we are to defend ourselves, we must keep our arsenal intact."

Excerpt from New England Letter, published by The First National Bank of Boston.

"Our country is built on the pillars of faith and courage. By overcoming starvation and the perils of the wilderness, our forefathers developed the capacity that enabled them to deal with stern reality, and through their energy, daring, and vision they laid the foundation for the American system which rests primarily upon personal initiative and individual freedom."

G. KEITH FUNSTON
President, New York Stock Exchange.

"The Stock Exchange, the entire financial community, and American industry itself all share today a depth of responsibility to the public virtually unknown twenty-five years ago. This responsibility is affirmed for one profoundly valid reason: Without the understanding and support of the public, American capitalism as we know it will disappear and this nation will fall prey to the specious promises of foreign ideologies."

CLIFFORD F. HOOD
President, United States Steel Corporation.

"What has become of the goals that our nation aspired to for so many years and which were considered fundamental to stability of character? What has become of thrift, for instance? We emphasize its virtues to our young people and our fellow citizens, and then permit our federal government to plunge the nation into a debt that presently averages some one thousand, six hundred dollars for every man, woman, and child. What has become of integrity? We operate our businesses on the principle that honesty is one of the first prerequisites for every member of a business enterprise. Yet political expediency is accepted as a 'necessary evil.'"

And he thought carrier

ie would be complicated!

He has just installed his first Lenkurt carrier. Now he knows how easy it to enjoy carrier's economies!

Like many other communications men, he ad been putting off buying carrier—simply ecause it was unfamiliar "electronic" equip- ent. Then he heard about our "Follow- hru" Engineering Service, and asked us for etailed recommendations. Following these commendations, he selected a short-haul ype 33A System.

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Service as long as you want it! Each step of the way—at installation or at any time during the life of the equipment—we stand ready to assure that your Lenkurt System will work *right!* You can expect—and you will *get*—years of completely satisfactory operation from Type 33A Carrier with no more than routine maintenance.

Why not write now and learn the easy way—the Lenkurt way—to real savings through carrier?

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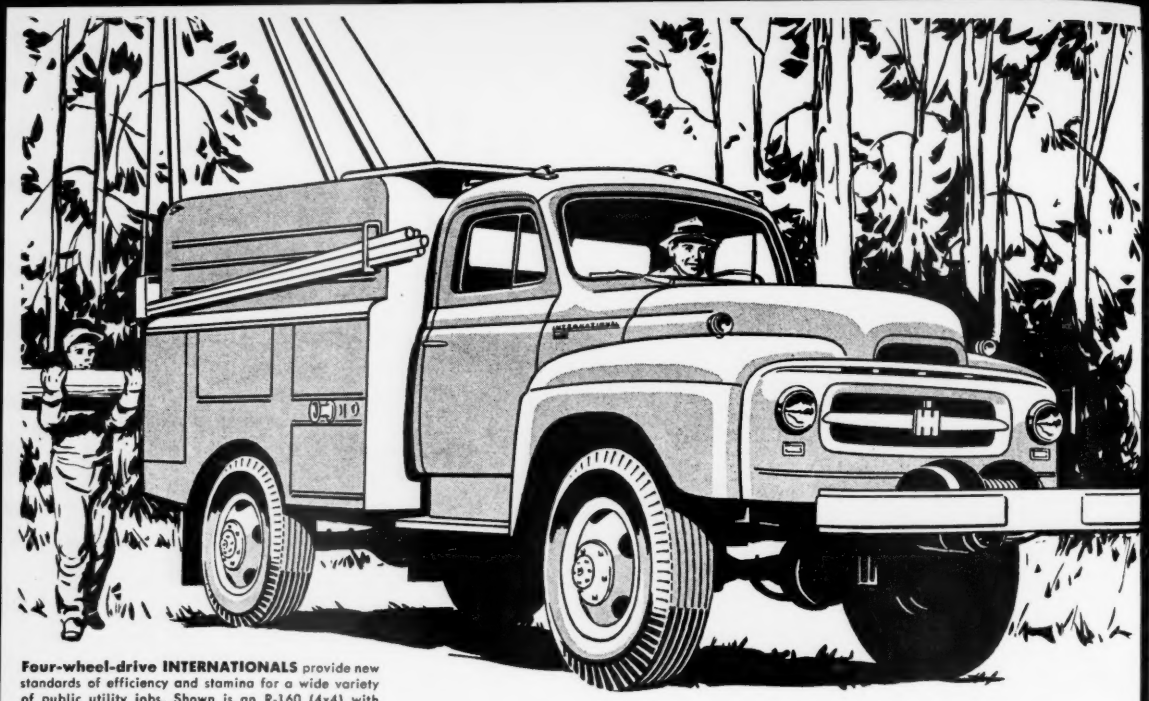

Four-wheel-drive INTERNATIONALS provide new standards of efficiency and stamina for a wide variety of public utility jobs. Shown is an R-160 (4x4) with service-utility body, winch, and pole setting equipment.

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INTERNATIONAL four-wheel-drive trucks bring to public utility operators entirely new 4x4 performance and efficiency. These new four-wheel-drive trucks combine famous INTERNATIONAL stamina, long life, and operating economy with everything that's new and best in 4x4 design.

A two-speed transfer case affords eight forward and two reverse speeds, permitting movement of men, tools, and equipment over all kinds of terrain. *Two transmission power take-off openings allow operation of front-mounted winch, hydraulic hoist, or other auxiliary equipment. There is provision for mounting a third power take-off on the transfer case.*

INTERNATIONAL 4x4 trucks have everything it takes for tough public utility assignments, plus extra easy steering and handling, famous driver-designed Comfo-Vision cabs. Study the extra-value facts shown here, then get complete details from your INTERNATIONAL Dealer or Branch.

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America's Finest Four-Wheel-Drive Trucks

Two chassis models: Model R-140 (4x4), 130- a 142-inch wheelbases, GVW rating, 11,000 pound Model R-160 (4x4), 154- and 172-inch wheelbase GVW rating, 15,000 pounds.

All-truck power: Both models powered by famo INTERNATIONAL Silver Diamond engines.

Transmission: Sliding gear selective type. Fo speeds forward, one reverse. Power take-off ope ings on right and left sides.

Transfer case: Two-speed declutching type, pr viding eight forward and two reverse speeds, wi manual disengagement of front axle for norm two-wheel-drive operation. Three-position shiftin —high, 1.00 to 1; low, 1.87 to 1; and neutral. Pr vision for mounting full torque power take-off rear of input shaft.

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"Standard of the Highway"

why men who know carrier use

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Follow-thru Engineering

If you're like most communications men, you know the many uses and advantages of carrier circuits. But chances are you'll never have need to make as thorough a study of carrier equipment as our carrier engineering specialists. That's why . . . when planning new carrier . . . so many communications men rely upon Automatic Electric's *Follow-Thru Engineering*. Here's what this cost-cutting service means to you . . .

Preliminary engineering is the first step. The day you start thinking about carrier is a good day to call on Automatic Electric! We'll work with your engineers, right on the job, and give you a complete *over-all* carrier plan. You save because of the economies that result from long-range planning.

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Carrier engineering for life! Automatic Electric engineering service is available throughout the life of your Lenkurt equipment. When carrier re-arrangement or expansion is required, the same concrete help is on call to adapt your Lenkurt equipment to changing needs.

Men who know carrier buy Lenkurt! From coast to coast, communications men have multiplied circuits at minimum cost by using Lenkurt Carrier. This standardized, flexible, top-quality equipment is available in a complete range of systems to meet any of your carrier requirements. A letter or call will bring complete facts or an Automatic Electric engineer to your desk.

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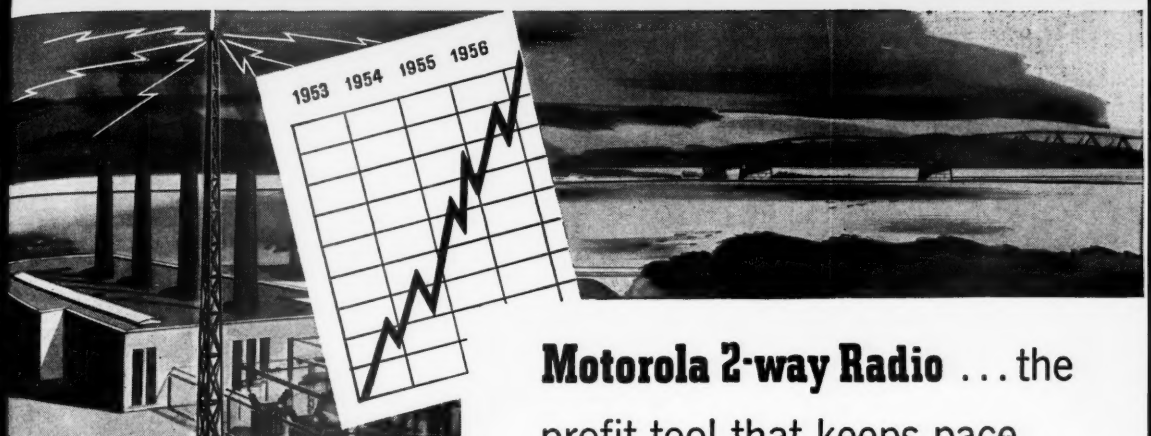
AUTOMATIC ELECTRIC—LEADERS IN CARRIER COMMUNICATION—**LENKURT**



Motorola 2-way Radio ... the profit tool that keeps pace with the expanding Power Utility Industry

Continuity of Service is being maintained today with a higher guarantee and at lower cost by hundreds of electric power companies. Alert dispatching via Motorola 2-way radio has accounted for great gains in the overall efficiency of these service organizations.

And as capacity is doubling every ten years — so is the use of Motorola radio communication systems . . . and no wonder . . . these highly reliable and flexible tools have multiple applications with gains on the books for every department that uses them.

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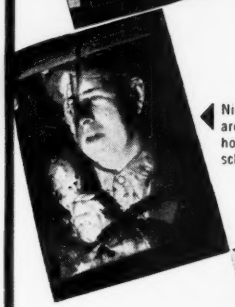
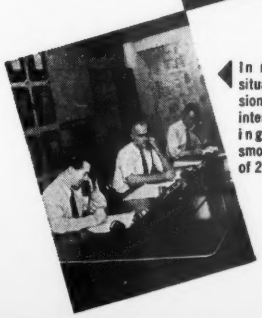
The radio controlled operation is the more-profit operation

Orders quickly dispatched to line service and repair trucks eliminates much dead mileage and minimizes waiting and overtime.



Night emergency calls in bad weather are handled in 1-2-3 order enabling home service units to keep on schedule when demands get heavy.

Powerline construction and repair work is expedited by constantly available, mobile communication between distant line crews, parts and supply departments.



In many emergency situations the supervision and expediting of interstation load switching is "rescued" smoothly with the aid of 2-way radio.

MOST POWER utilities insist on Motorola for their radio communications equipment because they have learned from first-hand experience to expect top performance and utmost reliability. They have found—

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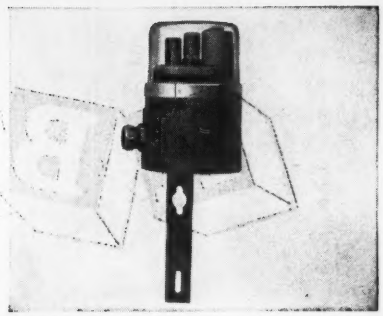
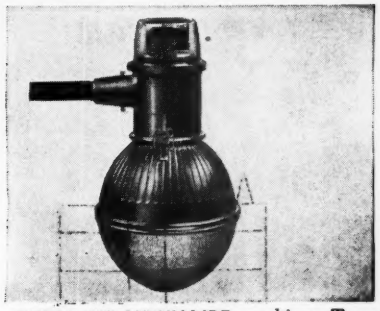
EW METER-SOCKET MOUNTED PHOTOELECTRIC CONTROL uses the same reliable rcuit as the Type P Control and the Form 110 Luminaire. Its standard meter-socket ounting simplifies users' stocking, and permits plug-in design for easy field servicing.



TYPE P CONTROLS provide sensitive, low-cost, photoelectric control of series or multiple outdoor lighting circuits.



FORM 110 LUMINAIRE combines Type P control and standard optical systems in one compact unit for multiple circuits.

IING ASIS New G-E Photoelectric Street-lighting Controls

rovide reliable service longer, eed less maintenance, cost less

General Electric makes both separate photoelectric con- ols and complete photoelectric luminaires. Both now use entirely new control element with an etched-circuit and -soldered connections. These new manufacturing tech- ques make possible a better, more accurate photoelectric ntrol at a lower price.

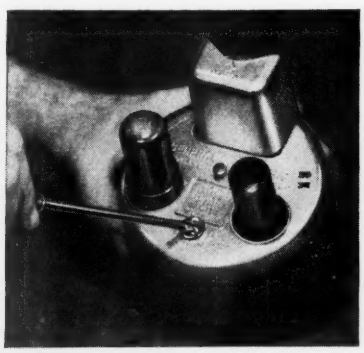
G-E photoelectric controls give you light whenever its eded, regardless of the time of day. Power consumption is w, and the circuit design assures maximum tube life. The ntrols do not require adjustment while in service, and need no attention after power failures.

The new units are completely interchangeable with G-E photoelectric controls already in service. Enclosed in a standard glass meter cover for protection against physical damage, the control element plugs in, permitting replacement of the unit without reorientation.

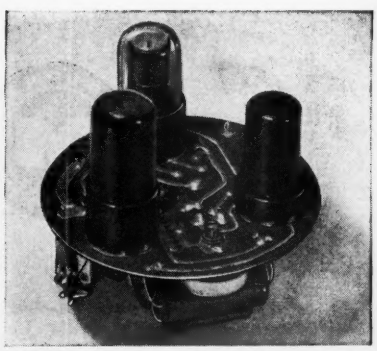
For more information see your nearest G-E Apparatus Sales Office or Authorized Agent; or write for Bulletin GEA-5141 to *Section 452-136, General Electric Company, Schenectady 5, N. Y.*

GENERAL ELECTRIC

Y VIEW SHIELD helps prevent stray light m actuating G-E photoelectric controls, d protects phototube from sun's rays.



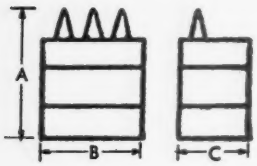
OPERATING LEVEL can be easily adjusted in field or shop by turning slotted screw accessible through protective casing.



ETCHED CIRCUITS and dip-soldering assure positive electrical connections and permit easy replacement of components.

THE A B C's OF TRANSFORMER MANUFACTURE

The three dimensions for transformers in the blueprint stage, as shown in diagram, are A, B, and C, the physical measurements of a product. This product would be of little value to today's utility without the coefficient A, B, C of knowledge, facilities, and experience as basic elements of the manufacturer.



The A B C's of transformer manufacture are the combined result of utility demands and manufacturing know-how. Needs expertly calculated by the utilities have made mandatory the possession by manufacturers of A, a high level of knowledge; B, wide facilities; and C, depth of experience.

Moloney is fully qualified in the A, B, C's of transformer manufacture. Since 1896 it has been building and expanding its facilities, its knowledge and its experience to parallel, and to anticipate, utility needs. Now, once again, another long step forward has been taken in increasing facilities here at Moloney so that we can continue to produce transformers capable of superior operation in the high ratings so necessary to today's utility.

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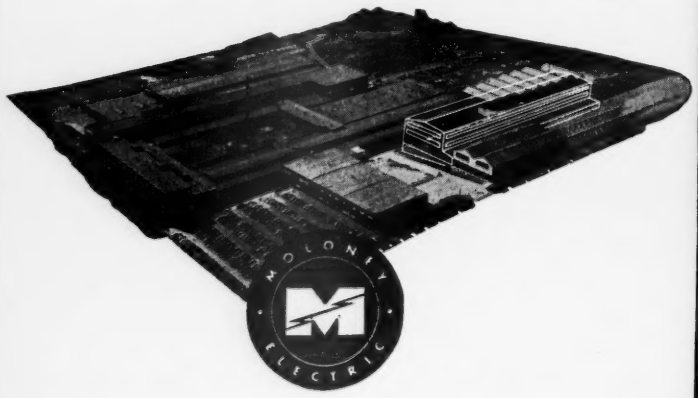

MOLONEY ELECTRIC COMPANY

Manufacturers of Power Transformers • Distribution Transformers • Load Ratio Control Transformers • Step Voltage Regulators • Unit Substations • Electronic Transformers

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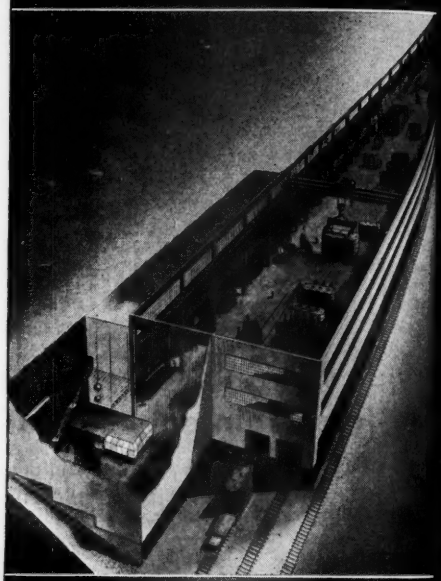
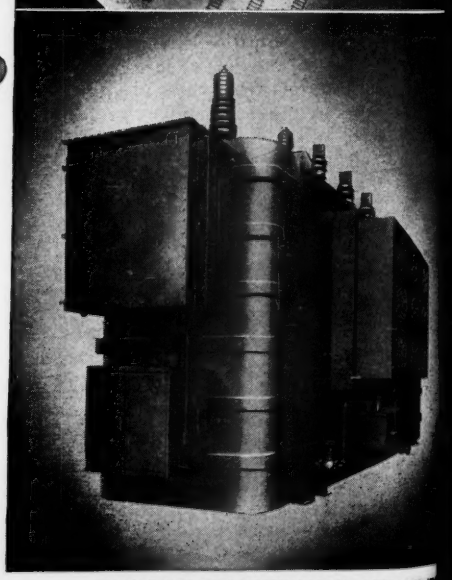




UTILITIES *A·l·m·a·n·a·c·k*

AUGUST

Thursday—5 *Southern Gas Association will hold home service conference, Nashville, Tenn.*	**Friday—6** *Appalachian Gas Measurement Short Course will be held, West Virginia University, Morgantown, W. Va. Aug. 23-25.* ***Advance notice.***	**Saturday—7** *Western Electronic Show and Convention will be held, Los Angeles, Cal. Aug. 25-27.* ***Advance notice.***	**Sunday—8** *American Society of Mechanical Engineers will hold fall meeting, Milwaukee, Wis. Sept. 8-10.* ***Advance notice.***
Monday—9 *Ohio Rural Electric Co-operatives begin meeting, Columbus, Ohio.*	**Tuesday—10** *Mid-West Gas School and Conference will be held, Iowa State College, Ames, Iowa. Sept. 8-10.* ***Advance notice.***	**Wednesday—11** *Pacific Coast Gas Association will hold meeting, Vancouver, British Columbia, Canada. Sept. 8-10.* ***Advance notice.***	**Thursday—12** *American Water Works Association, New York Section, will hold annual meeting, Montauk, Long Island, N. Y. Sept. 9, 10.* ***Advance notice.***
Friday—13 *Southern Gas Association begins pipeline operations and engineering conferences, Houston, Tex.*	**Saturday—14** *Michigan Independent Telephone Association will hold annual convention, Grand Rapids, Mich. Sept. 9, 10.* ***Advance notice.***	**Sunday—15** *American Bar Association begins annual meeting, Chicago, Ill.*	**Monday—16** *Rocky Mountain Electrical League will hold annual fall convention, Estes Park, Colo. Sept. 12-15.* ***Advance notice.***
Tuesday—17 *Illuminating Engineering Society will hold national technical conference, Atlantic City, N. J. Sept. 12-16.* ***Advance notice.***	**Wednesday—18** *Independent Natural Gas Association of America will hold annual meeting, New Orleans, La. Sept. 13, 14.* ***Advance notice.***	**Thursday—19** *Southeastern Electric Exchange, Personnel Administration Section, begins meeting, Asheville, N. C.*	**Friday—20** *Natural Gas Gathering Conference begins, Shreveport, La.*

Courtesy, Alabama Power Company

Modern Utility Office Building—Birmingham

Public Utilities
FORTNIGHTLY

VOL. 54, NO. 3 AUGUST 5, 1954

Impact of Inflation on Public Utilities

A group discussion by Frank L. Griffith, vice president and comptroller, The Peoples Gas Light and Coke Company; W. J. Herrman, vice president, Southern California Gas Company; and Robert E. Ginna, executive vice president, Rochester Gas & Electric Corporation.

STATEMENT BY FRANK L. GRIFFITH*

THE positions of Mr. Ginna, Mr. Herrman, and myself could easily be the subject of a cartoon. Mr. Ginna is the fellow with the swollen jaw who gets to the dentist's office door but won't go through, reassuring himself meanwhile that if he will be patient long enough, his trouble will disappear of itself and he won't need the dentist's services. Mr. Herrman gets into the dentist's chair, all right, but takes the view that the seat of the trouble need not be too accurately identified. Maybe just any treatment, even if it is not applied to the particular cause of the trouble, will give relief. In my section, the patient wants particular treatment of the particular disturbance.

*Vice president and comptroller, The Peoples Gas Light and Coke Company. For additional personal note, see "Pages with the Editors."

Because I have recently received a letter from a person highly placed in the United States Treasury Department which says that "we hope that at least *inflation is a thing of the past* and that over the years your problems and those of the other industries can be resolved," I feel it necessary to point out for the purposes of our discussion that while it may possibly be true that we are not having and that we may not have any *further* inflation, we shall still have price inflation with us unless and until, as now appears to be utterly unlikely, prices recede to, or even below, the levels prevailing in 1940 or earlier. Barring such a price recession we shall continue to have inflation with us even though still further price level increases do not develop. We cannot *choose* to be unaffected by inflation any more successfully than we can choose to be unaffected by any other phenomenon existing in fact.

It is to be noted that a great part of the *adverse* effects of inflation are readily observed and understood. Higher wage rates, higher material prices, and such like cannot possibly develop without notice. Increases in pension and other employee benefit plan costs, as a different kind of example, generally are not quite so obvious because they are not tied so directly to day-to-day expenditures and operating expense records. The only difference, however, between those inflationary effects which are observed immediately and these others which are recognized a little more gradually is that the latter are activated by a slower-burning fuse. There are even less obvious effects of inflation upon public utility companies, to which I would like to devote the major part of the space allotted to me.

While some of the adverse effects of inflation may in part be offset by economies of one kind or another that may be undertaken, I point out that any such economies could, and perhaps should, have been initiated whether inflation had occurred or not. Therefore the economies are only offsets, not in any sense direct remedies.

As a matter of fact, all of the adverse effects of inflation upon the dollar costs of public utility companies have one common aspect. They can all be recovered from, and can only be recovered from, by securing offsetting increases in dollar revenues. By dollar costs I mean additional dollars of cost for the same amounts of labor and materials and by dollar revenues I mean additional dollars of revenue for the same amounts of utility service.

The recovery of greater dollar revenues means higher rates for service. Higher rates for service depend upon the showings made in support of them. The demonstrations required to prove the need for higher service rates to cover increased costs of the labor and materials immediately utilized in the day-to-day performance of the utility service ordinarily present no substantial problem. It therefore appears that they need no extended discussion here. With that preface I shall limit my remarks to the subjects of return on and return of the long-lived utility property, commonly referred to as utility plant, utilized in producing and furnishing the utility product or service.

The effects of gradual inflation are insidious and in large part hidden at any given time. If price level change is spread over a long enough period it may go unnoticed except by technical economists be-

cause only some segments of the economy will be particularly affected at a given time. The change in price levels since 1940 has not been so gradual, the purchasing power of the dollar having diminished since then by almost 50 per cent.

The twin problems related to the securing of adequate returns *of* and *on* property owned prior to the time the trend in changing price levels became acute relate to what are by far the least understood impacts of inflation upon utility companies and those apparently most worthy of discussion. For convenience I have taken 1940 as the beginning of the period of inflation which is under discussion.

I WOULD like clearly to concede now that all utility companies are not adversely affected in the same degree by the dollar value declines since 1940. The importance of present price level inflation upon individual utility companies in respect to their returns of and on long-lifed property is in large degree proportionate to the extent to which their utility plants now in service are comprised of pre-1940 items of property. Any future inflation, or dollar value decline, can be expected to produce effects in respect to property now being acquired comparable to those that the existing degree of inflation has produced in respect to property heretofore acquired. A company whose property has only recently been developed, as is the case with some natural gas pipeline companies, can for the moment afford to take only academic interest in the effects of price level inflation. However, the trends of dollar value decline and price level rise *may* have been arrested only momentarily.

That utilities seek adequate returns on and of ***property*** devoted to the public service may sound somewhat novel to some utility people, particularly those who have in the last twenty years or so come to consider a formula developed, token-dollar "rate base," as a suitable substitute for the actual rate base; that is, the utility property itself.

Let us consider the effect of inflation to date upon the problem of securing adequate returns on and of older property.

We nowadays distinguish between regulatory jurisdictions as being of either the "fair value" or "original cost" varieties. These characterizations relate, of course, to the rate-fixing operations of the utility commissions in question.

UTILITY rates, or prices, are economic phenomena. Inherently they involve economic considerations. Their levels determine whether the full, true costs of furnishing a particular quantity of service will be repaid or not and how desirable any quantity of utility service may be to a customer in comparison with other services he may procure with his money. No matter how much effort may have been made in the past twenty years, or how much there may yet be, to fix rates by formulae having no reference to economic considerations currently affecting the utility, the rates when fixed nevertheless have irresistible economic significance as between the utility and its customers and upon both it and them. The term fair value is loosely used to designate jurisdictions in which at least nominal consideration is given to economic factors in the process of fixing rates.

A fair value rate base, whatever the use to which it is to be put, is not and should not be looked upon as being in any respect an ***increased*** rate base, as compared with

the original cost of utility property. The fair value is only an ascertainment, in terms of today's dollars, of the value of the *property* which is truly the rate base. The fair value tends to be the result arrived at by applying the rates of exchange between different kinds of money to the original cost of the rate base property.

FOR the purpose of illustration, the Peoples Company's average cost of installing 6-inch cast-iron mains in 1953 was $4.74 per foot. The average cost of all such mains the company had in service at the end of 1953 was $1.62 per foot. As of the same date the average cost of 6-inch mains then in service which were installed prior to December 31, 1940, was $1.33 per foot.

Taking a unit of capital in the amount of $100, that sum was sufficient to pay for the cost of 75 feet of 6-inch main as installed before 1940. The same amount would pay for the installation of only 21 feet in 1953, less than one-third as much. Each foot of main laid in 1940 or before performs the same function as is performed by a foot of main laid in 1953. Yet the capital contribution which in 1940 or prior thereto made available to the utility the service capacity of 75 feet of main would on an original cost basis get no more return on that amount of property than would the capital contribution of 1953 which provided, with the same nominal number of dollars, the service capacity of only 21 feet of 6-inch main.

It is the sum of these and other such units of service capacity which constitutes the real wealth—the real capital—devoted by a utility to the use of the public which it serves and which, in consequence, is its real rate base.

VIRTUALLY any specific item of utility plant, and particularly distribution plant, will furnish a similar cost comparison, old and new. If even remotely proportionate returns are to be obtained on and of the amounts of property which capital contributions of like numbers of dollars at different times have made available for the utility's operation, adjustment must somehow be made to compensate for the inflationary changes in price levels which have produced the situation described.

It is sometimes contended that, notwithstanding the extreme degree of regard for original cost in certain jurisdictions, a utility company's own original cost of a 1953 installation does not fairly establish the level of costs being incurred today. It is in such cases urged that the differences between specific costs in 1940 and now are brought about in part by "improvements in the art" or some other never-specifically-described factor not related to price level inflation. Without conceding the propriety of this contention, the advocates of adjustment for inflationary price rise in the fixing of utility rates are generally willing to forego insistence upon the full allowance they believe the circumstances justify and to base adjustment, instead, on published and generally accepted price level statistics—the Bureau of Labor Statistics Consumers Price Index, particularly. It is important that attention be concentrated on getting recognition for the inflationary price rises however indicated, foregoing undue argument as to the merits of one indicator in comparison to another.

SOME of us seem to accept with a kind of fatalism a view that has been urged upon us in the last twenty years or so that

original cost has an uncommon kind of sanction, as related to utility matters, which supersedes economic considerations and somehow nullifies economic processes. I can easily recall, however, the time when the original cost concept, as such, was born. It was advanced chiefly in the 1930's, and took root at a time when price levels had for some time been relatively stable and when public utilities and their managements were held in rather low political esteem.

The conditions in which the original cost concept was first brought into prominence in public utility rate regulation prevailed long enough to permit a sort of hypnosis to develop, as a result of which there is in some quarters a view that it is not only hopeless but somehow improper to seek any allowance for current economic fact in original cost jurisdictions, in so far as the costs of using long-lived property are concerned. Nothing but serious, strenuous, and sustained effort will change the situation in those jurisdictions. We cannot hope that utility rate making, and thereby utility operations, will be established on proper economic bases merely by spontaneously generated legislation or evolution of new concepts by regulators. We must ourselves labor without limit to get to the level we must reach.

Let us not accept as valid the view that utility security holders should receive returns only on and of the happenstance numbers of dollars which stand in the accounts as symbols for the property which is actually performing the utility service. It is the property owned by utility company equity security holders, through ownership of the company's stock, which is performing a utility service, and depreciating in the course thereof, not the dollar symbols therefor recorded as original cost in the accounts. It is the property today performing the service on and of which utility investors are entitled to returns. So many methods have been utilized for proving to regulatory commissions the fair value, whether called by that term or some other, of the property devoted to the public service that it would be presumptuous for me to discuss here any one kind of showing, whether in proof of fair value itself or of a rate of return so adjusted as to produce a fair return on the property when applied to the original cost thereof.

Members of the Peoples Company's management feel very strongly that return *on* fair value and return *of* fair value are but two sides of the same medal. A fair return is not being earned, regardless of the basis of calculation, unless the purchasing power represented in a given period by the equity investment in the utility property is being conserved and kept whole. The position of utility managements in this respect is not altogether unlike that of the administrator of a pension trust, or other such body of funds or property. It is bootless for the administrator in such case to point to a large return on the corpus of the trust in a given period if and to the extent that there has in the same period been a shrinkage of principal. Income, or what the utility business recognizes as return *on* utility property, exists only after every dollar of cost encountered in producing the income has been recognized and deducted from revenues.

We will urge as freely as anyone that utility companies should have a full measure of return *on* the fair value of the properties utilized in performing utility

service. We urge also, however, that if the value or capital represented by the utility plant is being eroded through inadequate provision for the consumption of property which occurs in the furnishing of the service, that erosion will inevitably have to come out of what was mistakenly recognized as return on value. This process may, because of the very long lives of a great part of the items making up utility plant, be exceedingly slow in materializing, but it will nevertheless be certain.

Unless a utility is being compensated for the current consumption of service capacity on the basis of the cost, in dollars of current purchasing power, of the service capacity consumed, it will inevitably develop that, except as new capital is procured wherewith to maintain the same amount of service capacity, the physical measurements thereof will have shrunk. New capital will thus have been required to maintain continued real value equivalent to the capital heretofore committed to the enterprise. There is some ground for question as to the legal propriety of issuing new securities when the proceeds therefrom will only make good the erosion of physical plant inadequately provided for by the depreciation provision.

ACCORDING to our views, depreciation is the current, contemporaneous expense sustained by a business as a result of continuing consumption of the service capacity of its plant. Because of the decline in the purchasing power of the dollar which has actually, and as a matter of common knowledge and acceptance, occurred during the past fifteen years or so, depreciation expense is no longer adequately measured in terms of the amount required to be charged out each year in order to amortize over the service life of the plant the original cost thereof. Instead, it must now be measured in terms of adjustment for the decline of the purchasing power of the dollar; in other words, must be measured in terms of dollars having the same purchasing power as the revenue dollar currently being received. The dollars in which original cost of plant may be stated represent an aggregate of dollars of differing purchasing power, depending on the time at which spent for procurement of plant. In great part they are dollars of much greater purchasing power than that of the revenue dollar brought in by current operations. An unadjusted amortization of the original, or nominal, dollar cost therefore cannot be used as an adequate measure of the depreciation cost actually being sustained by the business, although it continues, mistakenly, to be so used because of confusion as to the true nature of the expense being incurred. The confusion relates to a tendency to depreciate, as the word is used, the dollars of original cost, in ascertaining the magnitude of the expense being incurred, and failure to recognize that it is "property," and not dollars, whose depreciation is to be measured and recorded.

WE strongly advance the view that it is a utility's gas mains and electric lines, service pipes and lines, meters and all other manner of physical property which are actually depreciating and not a dollar amount in which those properties happen to have been recorded over a long period of years. That amount, representing an aggregate of dollars of many different values, is now only a symbol. The tendency is to mistake the symbol for the very real properties for which it stands.

We concede that price declines and corresponding dollar value increases will, when and if they ever again reach or fall below 1940 levels, have opposite effects from those resulting from price inflation.

We urge, also, that careful distinction be made between the gross amounts sometimes computed and contended for in respect to dollar value adjusted depreciation and the lesser, net, allowances stockholders *must* obtain and record if the real wealth or capital being utilized in the public service is to be preserved.

It is perhaps worth while to note the 1952 report of the NARUC Committee on Corporate Finance, a part of which advised the parent body (quoting):

> . . . Accordingly, depreciation accruals —intended to recover the cost of the plant consumed in furnishing service— fall short of the amounts needed to replace low-cost plant retirements during periods of high prices, and added capital must be raised to maintain the existing service capacity of the plant. At the same time, utility rate increases are far below the general increases in wages, incomes, and other prices. The result has been ever-expanding demands for utility services at "bargain" rates which cannot be maintained as more and more plant is replaced at today's and tomorrow's higher cost levels.

I call attention, also, to the following brief statement from a decision of the Arkansas Public Service Commission in a matter affecting the Southwestern Bell Telephone Company, reported in 2 PUR 3d 1.

The commission said, in part:

> We are acutely aware of this problem in utility regulation, and we recognize that depreciation expense computed on original cost during this period of inflation may not maintain the capital committed to the utility service. The problem is currently under consideration by various regulatory bodies, and proposals have been made to change the Uniform System of Accounts to allow for additional depreciation expense.

Can we be any less alert in respect to measures for combating the effects of inflation upon utilities than are the regulatory authorities? Utilities should carefully distinguish, we believe, between the allowances they *must* have, net, and the greater gross allowances sometimes contended for in respect to dollar value adjusted depreciation cost.

Should Price Inflation Be Recognized By Gas Utility Managements?

Statement by W. J. HERRMAN*

As you may guess from my place in this discussion, I am representing a position somewhere in between extremes. From the point of view of fundamental philosophy—my sympathies are mostly with Mr. Griffith. From the point of view

*Vice president, Southern California Gas Company. For additional personal note, see "Pages with the Editors."

of what to do about these problems, I must admit considerable sympathy with Mr. Ginna's position, although I do not agree that the problems are not serious or should be ignored.

Since there is no disagreement regarding the fact that the country is now in an era of unprecedented price inflation, the ultimate validity of the standpat position must rest upon one of two alternates. The first is that prices will decline drastically in the near future so that no current adjustment is required. The second is that public utility equities are fundamentally different from common stocks in unregulated industries, and that investors in such stock should be treated in effect as subordinated debenture holders.

Space does not permit my quoting authorities on economics and finance who not only believe that current high price levels are here to stay, but who also believe that it is in the best interest of the country that they be maintained at present levels.

WITH the power of organized labor such as it is, can there be anyone who believes that labor rates, in terms of dollars, will ever fall to the 1940 level? If not, is it conceivable that prices of commodities other than labor will again fall to that level? And even if the completely unanticipated were to occur, is there anyone who believes that the utility industry could successfully isolate itself from the accompanying depression? Let us be realistic.

Regulation may provide a ceiling on earnings when the value of our service exceeds its cost, but when the reverse situation obtains, and costs begin to exceed values, the utility must absorb the loss, regardless of regulatory or accounting philosophy.

Now to the second alternate—should utility ownership be treated differently than the ownership of unregulated industry? I suppose that literally millions of words of argument have been written on this subject, and because of my interest in it, I have taken the time to read quite a few of those words—both pro and con. For whatever it is worth, my analyses of these arguments lead me to conclude that no single authority has ever made a straightforward case for any such discriminatory treatment. The arguments that have been made, and there are plenty of them, go rather to side issues. For example, in the early stages of inflation, the claim is made that prices have not risen greatly as yet and that it is normal to expect a compensating decline in the near future. Then after inflation has persisted a few years, the argument is put forth that a large part of the investment is now represented by deflated dollars, which is supposed in some way to lessen the erosion of the earlier investments. Nowhere do these folks say that inflation adjustments are wrong—it just never seems to be the right time to make such an adjustment effective.

Those who support the standpat position will tell you that we lived through previous postwar inflations and survived, and that we can do it again. I do not agree that two wrongs make a right, nor do I agree that because I recovered from pneumonia once that I should have no concern about repeating the exposure that was responsible.

OTHERS argue that since inflation strikes at all industry, why should the utility

be afforded special protection? It is true, of course, that the rest of the community is faced with the risk of losing part of its real income and assets as a result of inflation. The risk becomes a reality for any wage earner whose wages are not advanced, or any farmer whose prices do not rise, or of any business venture whose prices and profits do not rise in approximate harmony with the general price level. But the essence of the distinction between utilities and other businesses is that utilities are not free to try to overcome this admitted hazard except in so far as the regulatory authorities permit them to do so.

In the free market, other groups are legally permitted to adjust their incomes upward to compensate for inflation, and for the most part, economic conditions also make this result possible. The utility stockholder is, therefore, subject to the hazard only that the commission will treat him differently from all other stockholders. That risk is not an economic hazard but is an administrative hazard subject to control by the regulatory authorities.

MR. GRIFFITH indicates, and I concur emphatically, that the equity interest in utilities should be treated like other equities. We do not ask preferred treatment, we ask merely for equal treatment. Such equal treatment necessarily requires that inflation be recognized and provided for by some proper adjustment to nominal cost regulation. Failure to provide such adjustment leaves the utility stockholder in the unhappy position of a subordinated debenture holder, lacking both the security of seniority and the opportunity of the risk-taker.

WE come finally to the argument that any departure from an original cost rate base, original cost depreciation, and a rate of return based on the current cost of new capital introduces serious complexities into the regulatory process. We are told of the abuses of the last generation in the use of reproduction cost after World War I. With all these statements I agree, but not with the conclusion that a better procedure should not be adopted merely because it is complicated, or because some similar procedure was abused by someone else. We might equally well condemn airplanes because they certainly are very complicated and obviously they have caused a lot of damage. The procedures we are talking about here are complex, because the whole science of business economics is complex.

But the basic issue is very simple—should utilities' equities be differentiated from other equities, or should they have equal opportunity with other equities? In its historic origin, the function of regulation has been as a substitute for competition. Ask yourself, then, does competitive business recognize inflation? Of course it does, and there lies your answer. In my opinion, failure to recognize price changes and their impact on the capital requirements of a utility destroys completely the basic concept of regulation as a substitute for competition.

So much for the thesis that inflation is a fact, that we must live with it and adapt ourselves to the changes which it brings. The standpat philosophy implies that if we just go about our business, the adjustment will be more or less automatic and presumably quite satisfactory to everyone, including the pocketbooks of

our stockholders. Mr. Griffith contends, by contrast, that the adaptation requires certain specific modifications in our accounting techniques. He says further, and quite correctly, that if our yardstick is changeable, we must calibrate it. By way of illustration, he believes that so-called economic depreciation should be recorded on the books and that reported earnings of your company should be reduced accordingly.

He implies, however, that you are kidding yourself if you don't do as he says, because the cost is being incurred, and closing your eyes to it doesn't change the economic facts.

Now, it is very wholesome and necessary that we have someone like Mr. Griffith to lay the truth bluntly on the line. He says that there is a right way of handling these matters, and he wants to see them done that way. We might call this for convenience, the "purist" approach.

MY objection to this approach is principally one of emphasis. Most of the controversial issues in today's complicated world can be stated clearly in terms of black and white, but in practicality they are decided and the decisions are implemented in various shades of gray. What I am trying to say is that it is difficult in a free world to resolve many differences of opinion with one single uniform solution. Under the circumstances, we have to learn to live with compromises and expedients which may be far from perfect, but it is the best we can do.

Mr. Griffith says in effect: Here is a problem; it can be solved if you take this particular course. I say fine, let's use this basic compass setting if we can, but if it appears that any of us either can't or doesn't wish to follow that precise course, each of us must be free to do the best he can to meet his problems in his own way, in the light of his own individual circumstances and the limitations of his own local laws, regulatory climate, and competitive conditions.

MY point can perhaps be best illustrated by an example. To begin with, we must remember that the impact of inflation strikes at us from several directions. To the rate executive, inflation raises questions of rate base, compensation for full economic depreciation, and fair return. To the financial executive, it raises questions of capital structure, dividend pay-outs, and long-term financing. To the sales executive, it raises questions of competitive value of the service; to the accounting executive it raises questions of recording the results of operations.

The chief executive of a utility has the difficult problem of weighing these various impacts upon over-all management policy. He may be quite in accord with the accounting executive's desire for so-called economic bookkeeping. But his financial vice president tells him that this will reduce reported earnings and necessitate a reduction in the dividend and that the company will be handicapped thereby in the sale of new securities. So the president calls in his rate man and says how about a rate increase to absorb these economic costs which we are not recovering? If the company happens to be in Ohio or some of the other fair value states, the rate man would, in theory at least, seek higher rates to reflect increased rate base values. Perhaps he might also obtain a higher rate of return to offset a part of the extra cost of true economic depreciа-

tion over and above depreciation expense based on original cost.

Under present tax laws, the rate man will need to collect $2 or more in gross revenues for each $1 carried through to net income. The result may be so large a rate increase that the sales manager will find that he is priced out of certain markets. Meanwhile, the public relations executive will be tearing his hair over Drew Pearson's latest column that the utility is robbing the people again and maybe the best remedy is public ownership. Of course, in some other states, the rate man and his economic approach may not get to first base with the local commission, so the whole program bogs down before it reaches Drew Pearson.

PERHAPS some of you will say I am painting an unrealistically pessimistic picture. Mr. Griffith's company recently obtained rate increases predicated on a fair value rate base, with some additional allowance over nominal original cost depreciation, and, as far as I know, their rates are still competitive and their public relations are good. On the other hand, I believe the fair majority of the utility companies would be doubtful of their ability to duplicate in their territory what Peoples has done in Chicago. In my company, for example, unless we were able to translate economic bookkeeping into higher rates, my recommendation would be to maintain our books on their present original cost basis.

But this is not to say that the problem should be ignored. On the contrary, responsible utility managements should make an appropriate economic analysis of the impact of inflation as it affects them. Competitive conditions permitting, they should aggressively seek increased rates sufficient to overcome the dilution of the equity which is inherent in utilities during a period of inflation. If competitive conditions or unrealistic regulation do not permit increased rates, it may be necessary to review the company's over-all financial and dividend policy, looking toward the time when a larger percentage of the plant will be made up of higher cost units with correspondingly increased fixed charges.

Let us remember, in this connection, that bookkeeping methods cannot change total costs over the long pull.

ECONOMIC bookkeeping and rates recognize true costs each year as they occur. Original cost bookkeeping and rates simply defer recognition of a portion of such costs until the assets involved are physically replaced. Rates based on economic costs will tend to change in harmony with changes in price levels generally, but will be stable *between* major price changes.

Rates based on so-called nominal dollar costs will change only slightly as price levels change, but this change will persist over a long period of years as higher cost plant additions and replacements are weighted gradually into the original cost rate base. This process will continue until average plant costs increase to the then spot or current prices. The longer the property life, the longer it will take to reestablish equilibrium, and the greater will be the loss to the utility through failure to recover true costs in the interim. If the inflation is progressive, equilibrium will never be established, while the losses will become cumulative. A long-range view of these considerations is essential.

In the average case, I come back to the conclusion that the practical answer

will be neither black nor white. Some utilities have been able to recover a part of their true economic costs by return allowances in excess of the current cost of capital. Some other companies have been able to earn more than the nominal allowed return. In fair value states, of course, the recovery, if any, is usually through an increase in the rate base. In some few situations, the company may not be able to earn even its nominal capital costs.

The aggregate of all these results produces an average level of rates and earnings which in turn becomes a pragmatic yardstick for each individual utility. Obviously, some one company will be at the top of the list, another will be low man on the totem pole. The high company will, to a degree, be restrained from increasing rates further because of the widening margin between it and the rest of the industry. The company at the bottom, meanwhile, will be striving by all means at its command to improve its position in order to achieve more nearly the industry average. The method that any given company chooses and the progress it makes cannot be reduced to an accounting formula, but will depend on many variables unique to that utility.

IN conclusion, I submit to you that the utilities' best solution to the inflation problem is not greatly different from what is actually being done today. Generally speaking, we are moving forward on many fronts, and even though the intermediate goals may be different, the end objective —a more nearly adequate total return— is common to all. The regulatory agencies are indicating an increased awareness of the problem, and in a few states this has been translated into positive action. Each such decision, in turn, is bound to have a beneficial effect in other states, but nowhere do I see any evidence of a standardized formula.

Perhaps the greatest progress that we can make from here on out is through the medium of further public education. Such education requires first a better understanding of the problem on the part of the educators, and that, of course, is the purpose of this discussion. Obviously, the next step is discussion of techniques and procedures, and we have had a little of that. We have seen that inflation is a many-headed dragon, which affects our business from several directions, and we want to be sure before cutting off one head, that two new ones are not going to grow in its place.

Specifically, we should not commit ourselves, as an industry, to an accounting technique that we cannot implement in rates and financial policy. If we avoid such a general commitment, we automatically avoid the associated questions of price indices, the inclusion or exclusion of debt in the price adjustment, and similar controversies. On the other hand, we must not stand idly by in the hope that the problem will solve itself, without vigorous effort on our part. In short, I say that definite action is required, but that such action must be flexible to suit the circumstances in each individual case, while at the same time presenting a united front on the basic issues.

THE prospects for success of all such efforts obviously will be greatly enhanced if the entire industry, including our gas association, could come to some broad agreement on these basic issues. Re-

gardless of whether an individual utility desires to take any specific action, it seems to me that every executive must agree that inflation does have certain well-known effects on the financial results of his company's operations.

Whether he considers it serious or not, he must agree, for example, that orthodox original cost bookkeeping and regulation result in a cumulative dilution of physical assets represented by investments made at lower price levels. He must agree further, it seems to me, that original cost accounting overstates earnings expressed in consistent economic units. Finally, he must agree with the record, that utility common stocks, as a group, have failed to keep pace, either in respect to reported earnings or in respect to market prices, with generally comparable investments in unregulated enterprises. Stated otherwise, regulation has not been properly fulfilling its rôle as a substitute for competition.

ASSUMING general agreement on a few such fundamentals, what can we do, as an industry, that will help solve the broad problem for everyone, without involving any individual company in some untenable position? In an attempt to make some beginning along this line, I would like to propose the following suggestions as a basis for further discussion:

(1) That we stop avoiding the issues because they are controversial and annoying.

(2) That each of us calculate for ourselves, and in our own way, the difference between the nominal dollar income and the economic dollar income.

(3) That we give serious consideration to the inclusion of appropriate statements in our annual reports to stockholders disclosing the general effect of inflation on the equity ownership. I do not recommend, in this connection, that we attempt to state specific dollar quantities, for two reasons. First, because there is as yet no universal agreement as to how to make such calculations; secondly, because of the probable disturbing effect that such a statement might have on security holders of a specific company before they became aware of the fact that the problems involved were common to all.

(4) That we make every effort to gain recognition of the problem by responsible public bodies, such as the SEC, the Bureau of Internal Revenue, etc., with the objective of obtaining gradual corrective action which would be uniform for all companies.

(5) That the utility industry, as a whole, give its enthusiastic support to a program of increased public awareness of the impact of inflation on business generally, and the need for adequate recognition of the special problems faced by regulated companies.

Some Thoughts on Economic Depreciation

STATEMENT BY ROBERT E. GINNA*

THE foregoing discussions by my distinguished colleagues and valued industry friends represent opinions not entirely different on what is happening to the gas (and electric) industry because of inflation. There has been no secret—

*Executive vice president, Rochester Gas & Electric Corporation. For additional personal note, see "Pages with the Editors."

but alas some misunderstanding—as to where I stood on these vital matters and I appreciate the opportunity to offer my views in the hope it will stir more original thought on the subject. There is no single common panacea for all of us.

Some say I am a "standpatter" and some say I have a toothache. I deny flatly that I am a "standpatter." I admit that I have a pain, but it is not in my teeth.

There has been some rather involved explanation of what is happening to our utilities because of present price levels and depreciation practices, and management has been urged to resort to some radical measures to assure their survival. I shall try to express my views as simply as possible. Mine is neither a "head in the sand" nor a *"laissez-faire"* attitude.

The use of words carefully chosen to imply a desired idea is something which has been carefully studied by public relations men, politicians, and others from the time of Demosthenes to 1954. Highbrows call this "semantics." Armies do not retreat; they retire to previously prepared positions. The excess of spending over income was not incurring a deficit; it was an "investment in the future." If you like a man, you call him either a conservative or a liberal, depending upon his leanings. If you don't like him, of course he is either a reactionary or a radical.

DEPRECIATION is an inexorable and cruel fact and certainly there isn't anything economical about it, but "economic depreciation" somehow sounds less distressing. We shall, of course, decide on the facts rather than on the sound of words.

I therefore use for my subject the term "economic depreciation" which is used by many of those who advocate a certain theory of accounting.

This theory is that the advent of inflation makes improper the method of depreciation accounting which is presently prescribed by all the regulatory authorities and by all the taxing authorities, and which is also approved by the courts. Admittedly, we now charge operating expenses, and put in the depreciation reserve amounts which are intended, over the life of the physical property, to equal the original cost of that property, so that when the property is gone there will be among the assets as many dollars as were originally invested. In other words, the investment will be fully amortized. The "economic depreciation" advocates say this would be fine if the dollars hadn't changed but that, due to inflation, the investor doesn't get back as much real value as he put in.

They also say that depreciation accounting should not be considered as an amortization of investment but as a means of preserving the property, and so we should charge operating expenses during the life of the property with amounts sufficient to replace that property when it is gone. They say that while property is being used up the current cost of such consumption should not be measured by what it originally cost but by its value at current cost levels.

THERE are forceful arguments for what these people want to do. Much has been written and spoken on the subject, mostly by those who crusade for the theory. I will consider only some factors which seem to merit attention before you draw your own conclusions.

In the first place we have to deal with

hard facts in a cruel world and ofttimes we have to refrain from doing what we might like to do or what might seem to have theoretical justification. Fact number one is that if you *increase depreciation charges* above those involved in the present method you will either show *less earnings* or you will *increase rates*. Or, if you want to divide the load, you can have both less earnings *and* increased rates. It may be that this is all you want to know about the subject and the rest of this discussion can be skipped.

Of course, we have inflation and of course it is perplexing and distressing. Probably all of us suffer from it, unless perhaps members of labor unions, and they too may feel a shock when it comes to pensions, life insurance, savings accounts, etc.

Those who have loaned money on mortgages, purchased bonds, bought insurance or annuities, will have their dollars returned but will not get back the real value they put in. Those who invested in government bonds were supposed to get at the end of ten years one-third more than the original outlay but in actual purchasing power the repayment was actually less than the original investment.

Investors in utility common stocks are by no means the only sufferers from inflation. Should they get special treatment? In arguing for a fair rate of return, our hearts have always bled for the common stockholder who takes such awful risks. Utilities to a large extent are protected from competition as that term is generally understood. They supply services which, to a great extent, are necessities. The customers have to take our product and pay whatever our rates are. Now, are we going to give stockholders the added protection of a shield against inflation?

To a considerable extent the problem is one of whether the higher costs of replacing property in the future should be borne by the present customers or by those who receive service in that future time after the property has been replaced. As another hard practical fact we have the present customers now with us. They are ordinary human beings and among them are few who will make an idealistic fight to pay higher rates now for the benefit of those who live in the future. Most of those now with us will probably agree with the fellow who says, "Why should I do anything for posterity? Posterity never did anything for me."

As I have already pointed out, all the regulatory authorities and all the taxing authorities now require depreciation charges to be based on actual cost. In order to bring "economic depreciation" into effect all you need to do is to change all the accounting systems and regulations now in existence. Now mere inertia is a very rugged and durable obstacle and, in addition, there are plenty who believe that amortization of investment is all that is justified. They will give anyone some pretty tough arguments in support of that position. Furthermore, the regulatory authorities do not like increased rates any more than anyone else, but increased rates they would have to permit if they prescribed higher items for depreciation expense. Do you think they will be sympathetic to the proposed change?

The proposed procedure has been specifically rejected by the United States Supreme Court. This was the language in the Natural Gas Pipeline cases: ". . . We

refuse to make an allowance of amortization in excess of cost. To do so would not be the computation of a proper expense, but instead the allowance of additional profit over and above a fair return. Manifestly such an additional return would unjustly penalize consumers." [(1942) 315 US 575, 593; 42 PUR NS 129.]

MAYBE this was the wrong decision and possibly it too can be changed, but that is the way it is, and that is another hard fact.

Suppose we accept the proposed theory and suppose all the objections and restrictions can be swept aside. Just how would we proceed? I do not understand that the interest rate or maturity amount of the company's bonds would be altered or that the dividend rates of the preferred stocks would be increased. Adoption of the theory would not do anything for the senior shareholders. Those fellows would still take the wallop which inflation deals. Then, if depreciation charges were based on replacement cost for the entire property, the common stockholders who have a 25 per cent equity would get four times the benefit which the theory says they should have. And if some adjustment were made on this account it would be different for a company with 50 per cent stock equity, and still different for one with 100 per cent stock.

What would you do from here on about the so-called "reserve deficiency" which (on the theory we have been discussing) already exists? If you are providing for future replacement costs how do you determine what those costs will be twenty years from now? And how would you differentiate between stockholders who put their money in twenty years ago as compared with investors of ten, five, or one year ago, all at different cost levels? Inflation has certainly scrambled the eggs. Do you know how to get them back in the shells?

Some will say that we should first adopt a proper theory and then find out how to make it work. I do not decry theory or argue that we should remain fundamentally wrong, if indeed we are fundamentally wrong. But we do have to live in a practical world and we are obliged to do practical things. When we start somewhere we ought to have a pretty good idea of where we are going to land. We might not be as fortunate as Columbus was. Or was he!

THERE seems to be considerable uncertainty and confusion among the "economic depreciation" advocates as to how all these matters should or could be handled. You may be sure there would be plenty of controversy with the commissions and taxing agencies. Do we want more confusion and acrimony? I rather like the statement made recently by Commissioner Eddy of the New York Public Service Commission. He said:

> As you know, there have been numerous suggestions made to meet the impact of inflation; for example, the adoption of economic depreciation and the readjustment of the rate base to the purchasing power of dollars. Time does not permit a discussion of the theoretical merits of these plans; but from the regulatory standpoint there are certain decidedly practical objections. First, and this particularly applies to the economic depreciation theory, I do not favor—and I doubt if the public can

ever be convinced that any device of regulation is sound whose chief benefactor is the tax collector. Under existing tax laws such a device is impossible. Second, we have greatly simplified the methods of trying rate cases.

The time to settle the property account and the depreciation is not in a rate case. It should be a known fact and about which there is no dispute; and the trial of a rate case, if a trial becomes necessary, should be limited purely to the rate of return and to such estimates of revenue and expense as may be material.

Introducing any method of revaluation or of recomputing depreciation, in the long run, is going to be costly if for no other reason than lengthening the period of the regulatory lag. If the investing public knows that rate cases are speedily determined, it will be much more anxious to invest in utility securities than if it knows, irrespective of the need for increased revenue, that years will elapse before the increase is granted.

Regulation as it now exists is too complicated. Our aim should be to make it more simple. The solution to our problems lies not in the introduction of new theories of rate making nor in complicated formulae. The solution is the application of simple common sense in the light of ever-changing economic conditions. It is the result that counts, not the mathematics.

WELL, we still have our problems and we have to deal with them. I cannot believe that "economic depreciation" is a practical solution. Perhaps I am digressing somewhat if I suggest what we should work for. It seems to me that if a utility is permitted sufficient earnings to make its securities (of all classes) attractive to investors, the consumers could not complain, because any less would jeopardize the quality of service and the possibility of caring for increased demands. And I do not see how the present security holders could well complain if they are given as good treatment as voluntary new investors.

This is the "pragmatic" approach which was approved in the Hope Natural Gas Case, 320 US 591. I could burden you with many citations from commission and court cases showing that this view is basic in the thinking of many recognized authorities. While they may be plagued by their old precedents and so may still feel obliged to mumble the old shibboleths of rate base, rate of return, etc., they do manage to bring results into line with the practical requirements.

And so we have inflation! What are we going to do about it? After we emerge from the fog of words, charts, and graphs, it appears there isn't anything we can do to mitigate it except to charge higher rates than those we are now charging, and so have more dollars either for return to investors or for building reserves, or for both.

Now I have no sentimental objection to higher rates. I would like to have more dollars. I say that if you can increase your rates without hurting your market or damaging your public and political position, and *if* you can get permission for so doing —then more power to you and God bless you.

IN attempting to get those higher rates you will have not only to plead all the arguments made so forcibly by the others, but in addition you will have to convince

your regulatory authority that you really need help *now;* that you now have trouble financing and paying your present bills; that your present equity holders should now receive a higher return than new equity investors are satisfied with, and you will also have to answer several other questions.

But just in passing, why should utility common stocks be treated just like all others? Some adherents plead for equality and that utility equities should not be considered in a class with subordinated debentures. Do they not actually come pretty close to that? What other business is protected from competition and enjoys a captive market? Are you going to argue that you should also be protected from inflation and at the same time be allowed a high rate of return?

The risk of inflation for which stockholders should be protected, if possible, is to assure greater or more rapid amortization of the inflated cost of the new additions to plant. This, in my opinion, is the best that might be obtained from the regulatory authorities and it has the added merit of being consistent with the Treasury's proposed tax program.

As long as utilities can sell sufficient common stock to take care of their construction requirements, the proof that they need protection, past or future, remains to be demonstrated.

If a utility really needs higher rates, it first must justify a "fairer rate of return" or a "fair value" rate base. There is some indication that the present more moderate regulatory climate suggests some "resuscitation" possibilities for such a rate base. And we cannot expect to be allowed depreciation charges based on present costs unless the property is valued on that basis. If we can get those things, and if we can live with all the results, let's go to it! That is the kind of a "standpatter" I am.

If we can agree that each one of us will have to deal as best he can with his own problem in his own jurisdiction, my "ache" will be considerably relieved.

In conclusion, let me repeat hard fact number one: "Economic depreciation" means greater expenses and therefore lower earnings or higher rates. Let's be realistic about it all!

"The record of the investor-owned electric utility industry is one in which its 3,000,000 stockholders—and the perhaps 90,000,000 other Americans whose investment in the industry has been made through debt securities held by insurance companies, savings banks, pension trusts, and similar institutions—can take abundant pride. Perhaps more than any other, it is the industry which should not have been harassed and punished by discriminations offensive to the basic American sense of decency and fair play. The electric utilities and their regulators have served the nation well, and it is overwhelmingly in the national interest that they should continue to flourish."

—A. J. G. Priest,
Professor of law, University of Virginia.

Techniques for Obtaining Depreciated Replacement Costs

Replacement costs of property and their depreciated values have become increasingly important to utilities in "fair value" states; to all utilities because of the higher price levels.

By C. F. BOAKE*

ILLINOIS law requires that reproduction costs be considered in fixing just and reasonable rates for service rendered. The supreme court of Illinois early in 1953 in Illinois Bell Teleph. Co. *v.* Illinois Commerce Commission, 414 Ill 275, 98 PUR NS 379, 111 NE2d 329, stated that rates are just and reasonable only when they produce a reasonable return upon the present fair value of a utility's property, taking into "account current economic conditions, present price levels, and reproduction costs." Since then, after extensive testimony the Illinois Commerce Commission has issued rate orders for the important The Peoples Gas Light and Coke Company, 99 PUR NS 361, and the Commonwealth Edison Company.

In an order dated May 28, 1953, in the Peoples Gas Case, the commission found that a return of 5.8 per cent was fair, just, and reasonable. The commission also found the fair value of the company's property was $200,000,000, including $10,000,000 for materials, supplies, and working capital, and $2,800,000 for work in progress. It also determined that the net original cost and reproduction cost depreciated with the same inclusions were $155,988,056 and $278,990,224, respectively.

*Consulting engineer, Chicago, Illinois. For additional personal note, see "Pages with the Editors."

COMMONWEALTH EDISON COMPANY

COST OF REPRODUCTION OF ELECTRIC (EXCLUSIVE OF PRODUCTION PLANT) AND GAS PROPERTY AT JANUARY 1, 1953 AND SUCH COST DEPRECIATED, PRICED AS OF JANUARY 1, 1953 AND FOR THE AVERAGE OF THE THREE YEARS 1950 - 1952 INCLUSIVE

Line No.	Account No.	Account (A)	Original Cost 1-1-53 Per Books (A-1)	Trended or Appraised (B)	Factor (C)
7		Transmission Plant			
8	340	Land and Land Rights	$ 8,624,083	$ 12,048,805	1.00
9	341	Clearing Land and Land Rights	253,015	354,221	1.00
10	342	Structures and Improvements	5,330,841	12,131,454	1.00
11	343	Station Equipment	54,389,445	90,146,088	1.00
12	344	Towers	8,444,989	19,425,189	1.00
13	345	Poles and Fixtures	10,049,747	17,726,650	1.00
14	346	Overhead Conductors and Devices	16,807,994	29,132,015	1.00
15	347	Underground Conduit and Manholes	531,036	630,586	1.00
16	348	Underground Conductors and Devices	23,930,685	45,126,910	1.00
17	349	Roads and Trails	605,955	801,606	1.00
18		Total Transmission Plant	$ 128,967,790	$ 227,523,524	
19		Distribution Plant			
20	350	Land and Land Rights	$ 4,986,002	$ 6,880,787	1.00
21	351	Structures and Improvements	16,102,549	35,443,456	1.00
22	352	Station Equipment - Distribution	68,093,473	105,541,159	1.00
23	352	Station Equipment - Industrial	28,394,470	39,572,747	1.00
24	353	Storage Battery Equipment	273,230	608,283	1.00
25		Poles, Towers and Fixtures			
26	354	Wholly Owned	38,058,705	69,197,604	.92
27	354	Jointly Owned	12,649,825	26,203,329	.92
28	355	Overhead Conductors and Devices	48,388,073	79,555,657	.96
29	356	Underground Conduit	49,042,861	105,181,647	.92
30	356	Manholes, Tunnels, Etc.	35,828,048	68,596,772	.92
31	357	Underground Conductors and Devices	60,019,453	135,661,764	1.00
32		Line Transformers			
33	358	Transformers	30,535,389	45,175,736	1.00
34	358	Vault Installations	2,843,569	4,215,740	1.00
35	358	Overhead Transformer - Installations	5,633,400	7,018,259	.90
36		Services			
37	359	Overhead	16,981,020	29,444,249	.90
38	359	Underground Cable	1,311,272	2,071,694	1.00
39	359	Underground Conduit	1,861,689	3,215,672	1.00
40		Meters			
41	360	Consumers' Meters and Devices	29,704,543	36,551,884	1.00
42	360	Meter Installations	7,853,698	11,359,160	.90
43	362	Leased Property on Customer's Premises	2,611	2,611	1.00
44	363	Street Lighting Equipment	1,934,085	3,230,139	1.00
45		Total Distribution Plant	$ 460,517,965	$ 814,728,349	

I.C.C. #41130
Commerce Commission Engineering Staff
Exhibit No. 1

Cost Of Reproduction - January 1, 1953

New (D)	Weighted Age (D-1)	Estimated Age Life (Years) (D-2)	Resulting Condition % (D-3)	Salvage Adjusting Factor (D-4)	Final Resultant Condition (Ratio) (D-5)	Less Depreciation (E)	1950-1952 - Average Factor (F)	1950-1952 - Average Less Depreciation (G)	Line No.
									7
$ 12,048,805	-				100.0	$ 12,048,805	1.00	$ 12,048,805	8
354,221	-				100.0	354,221	1.00	354,221	9
12,131,454	21.1	50	57.8	-	57.8	7,011,980	.95	6,661,381	10
90,146,088	14.5	40	63.8	1.03	65.7	59,225,979	.95	56,264,680	11
19,425,189	20.4	75	72.8	-	72.8	14,141,537	.92	13,010,214	12
17,726,650	12.7	50	74.6	-	74.6	13,224,080	.93	12,298,394	13
29,132,015	17.0	50	66.0	1.03	68.0	19,809,770	.92	18,224,988	14
630,586	3.2	75	95.7	-	95.7	603,471	.93	561,228	15
45,126,910	14.4	40	64.0	1.06	67.8	30,596,044	.96	29,372,202	16
801,606	4.8	20	76.0	-	76.0	609,220	.94	572,667	17
$ 227,523,524						$ 157,625,107		$ 149,368,780	18
									19
$ 6,880,787	-	-	-	-	100.0	$ 6,880,787	1.00	$ 6,880,787	20
35,443,456	24.7	60	58.8	-	58.8	20,840,752	.95	19,798,714	21
105,541,159	16.2	40	59.5	1.02	60.7	64,063,484	.95	60,860,310	22
39,572,747	10.4	40	74.0	1.02	75.5	29,877,424	.95	28,383,553	23
608,283	19.4	35	44.6	1.01	45.0	273,727	.94	257,303	24
									25
63,661,796	12.7	45	71.8	-	71.8	45,709,170	.94	42,966,620	26
24,107,063	17.6	45	60.9	-	60.9	14,681,201	.94	13,800,329	27
76,373,431	14.0	45	68.9	1.02	70.3	53,690,522	.92	49,395,280	28
96,767,115	22.7	75	69.7	-	69.7	67,446,679	.93	62,725,411	29
33,109,030	17.0	40	57.5	-	57.5	36,287,692	.93	33,747,554	30
135,661,764	16.1	35	54.0	1.20	64.8	87,908,823	.96	84,392,470	31
									32
45,175,736	14.9	35	57.4	1.05	60.3	27,240,969	.96	26,151,330	33
4,215,740	12.7	30	57.7	-	57.7	2,432,482	.96	2,335,183	34
6,316,433	5.7	30	81.0	-	81.0	5,116,311	.96	4,911,659	35
									36
26,499,824	14.9	30	50.3	-	50.3	13,329,411	.91	12,129,764	37
2,071,694	10.6	35	69.7	1.06	73.9	1,530,982	.96	1,469,743	38
3,215,672	15.9	35	54.6	-	54.6	1,755,757	.93	1,632,854	39
									40
36,551,884	12.0	35	65.7	-	65.7	24,014,588	.98	23,534,296	41
10,223,244	12.7	25	49.2	-	49.2	5,029,836	.97	4,878,941	42
2,611	1.5	35	95.7	-	95.7	2,499	.95	2,374	43
3,230,139	14.0	35	60.0	1.02	61.2	1,976,845	.95	1,878,603	44
$ 785,229,608						$ 510,089,941		$ 482,132,478	45

On this basis, to obtain fair value, the depreciated reproduction cost is weighted approximately 40 per cent. In dollars the rate base was $44,000,000 greater than the net book cost.

In an order dated January 16, 1054, in the Edison Case the commission found that rates of return of 5.8 per cent and 5.85 per cent were fair and reasonable, respectively, for the electric and gas utilities. The commission stated that the fair value of the company's property was in excess of the capitalized net operating income for the test period adjusted to reflect the rates requested. The capitalization ratios used were the rates of return found to be fair.

The commission also allowed escalator fuel clause rates to reflect about 15 per cent of the incremental fuel costs varying from specified maxima and minima fuel cost levels. Nineteen fifty-two fuel costs approximated 19 per cent of the total of operating expenses and taxes. The commission handed down this order on the sixteenth day after completion of testimony, cross-examination, and filing of the company's brief, which with postponements and setting of hearings consumed slightly over six months subsequent to filing of the petition on June 25, 1953.

Price Levels

Should price levels have reached a plateau "around which short-run fluctuations will now occur,"[1] all utilities are concerned in the cost of replacing retired property. It is within the province of state regulatory commissions to allow increased depreciation provisions, so it behooves those utilities wishing it to make the requests. I agree with Professor McCracken, that the new price level plateau most likely will be permanent for three reasons:

1. The present, enlarged money supply will not decline significantly.
2. Unit labor costs will not decline.
3. A depression severe enough to force the price level down to anything like prewar levels is not probable, desirable, or feasible.[2]

It hardly can be visualized that any administrative or legislative branch of government would commit political suicide by allowing a recurrence of a depression like 1929-32.

The House Ways and Means Committee has approved for inclusion in the Revenue Act of 1954 the declining balance method for calculating depreciation provisions which would allow the writing off of property built or installed after December 31, 1953, by two-thirds of its cost at half life. The committee also voted that a taxpayer could use any other method which did not exceed the amount allowable under the declining balance method. This recommended adjustment of depreciation rates is progressive, as were the sanction in the code some sixteen years ago of the use of LIFO (last in, first out) accounting for inventory values, and in recent times of a provision eliminating taxable gain in a private residence sale when the proceeds are reinvested in another home. F. Warren Brooks, vice president of The Cleveland Electric Illuminating Company, in recommending the use of

[1] Paul W. McCracken, professor, school of business administration, University of Michigan, in "The Present Price Level Is Here to Stay," published in Public Utilities Fortnightly, January 21, 1954.

[2] *Ibid.*

economic depreciation in PUBLIC UTILITIES FORTNIGHTLY, September 24, 1953, stated "it is submitted that an amendment of the Internal Revenue Code to permit the use of an adjusted original cost basis for the determination of the depreciation allowances should be seriously considered by Congress—for a forthcoming revision of the general tax law."

Adjustment of Rate of Return

To continue the use of original cost and reflect changed economic conditions one proponent[3] in his formula for adjusting the rate of return used a change of price factor, stating "The price index used is an equally weighted average of BLS Wholesale Prices and BLS Cost of Living with the Handy-Whitman index of utility construction costs. Some earnings are spent for consumption, others are reinvested, others go to buy additional plant, hence the three different indexes to represent these three uses and to lend more stability than is found in any one index." It is my belief that price changes for plant should be those directly applicable to each account.

Cost of Reproduction Study

THE use of reproduction has been objected to through the years by many due to its prohibitive cost in time and money. The balance of this article is devoted to the demonstration and illustration of procedures I used on behalf of the engineering staff of the Illinois Commerce Commission in the Commonwealth Edison Company rate case #41,130, wherein it will be shown how all utilities which keep records of original cost cannot afford not to have made a reproduction cost study. That these procedures were economical and efficient is proven by the forty-five days in which it was accomplished, involving no more than an estimated 250 man days, 200 of which were furnished by the accounting, engineering, and clerical force of this $2 billion company.

The acceptability of the report indirectly is attested by the commission, whose depreciated reproduction findings varied less than one per cent, from the study herewith illustrated.

Methods Used in Study

CONCISELY, construction cost indices were applied to original book costs to obtain trended values, which in turn were adjusted to eliminate excess piecemeal construction costs. These adjusted amounts were depreciated by the straight-line method by applying the estimated service life to the weighted age of each account. The use of index numbers and the straight-line depreciation method expedited the study immeasurably with the results described. These following procedures can best be visualized by referring to the excerpt from Exhibit No. 1, ICC #41,130, commerce engineering staff, pages 138 and 139:

(1) Summary listing from the original cost study available of the book cost of all surviving property by accounts and amounts (column A and A-1).

(2) Application to column A-1 of indices of construction to obtain current costs (column B).

[3] Walter A. Morton, professor, department of economics, University of Wisconsin, in "Rate of Return and the Value of Money in Public Utilities," *Land Economics*, May, 1952.

(3) Adjustment of the current costs with factors (column C) to eliminate the extra costs of piecemeal construction to obtain reproduction cost new (column D).

(4) The weighted age in column D-1 was obtained from the company's records.

(5) The service life, column D-2, was estimated by considering all factors of depreciation.

(6) From the ages in column D-1 and the service lives in column D-2 the ratios of condition in column D-3 were calculated by the straight-line method. I have accepted the straight-line theory and used it for many years as being equitable in addition to lending itself to the expeditious calculation of accrued depreciation.

(7) The factors in column D-4 were calculated as adjustments to column D-3 to reflect the net recoverable salvage resulting in an adjusted condition (column D-5).

(8) The factors in column F effect the transition of the reproduction cost depreciated values existing January 1, 1953, in column F to the average of the prices for the 3-year period 1950-52 inclusive.

A COMPREHENSIVE grasp of the details and procedures may best be afforded by referring to Commerce Engineering Staff Exhibit #2 (see page 143), which

(a) Demonstrates the validity of use of original book cost as inventory.

(b) Demonstrates the methods of applying construction costs to obtain present-day cost, thence reproduction cost new.

(c) Satisfied the writer that the calculations made by the Edison Company prior to his assignment were proper with respect to the weighted age of the property units and to the values restated in terms of January 1, 1953, construction costs.

Considering the inventory feature: Column 5, Exhibit #2, gives the surviving property for account No. 243—Exchange Aerial Wire, column 6 the construction cost indexes for this account, and shows, for instance, that the surviving property installed in 1937 (line 12) cost 105.9 per cent per unit of that installed in the base year.

Likewise (line 27), the 1952 property cost 249.9 per cent per unit compared with the base year. Assuming that the cost per unit in the base year was $1, and all property units were similar, then for 1937 (line 12) the surviving property at a cost of $1,066.89 represents 1,007 units, as found in column 7, which is column 5 divided by column 6 multiplied by 100. Likewise, the surviving property in dollar amount of $420.76 for 1952 (line 27) represents 175 units. The total of column 8 (line 28) will produce 14,382 units at $1 per unit or $14,382. Thus it is seen that an inventory is obtained, based on the assumption of the correctness of the indices used in column 6 and on the surviving property values in column 5. This latter has been accepted as basic. A count of the units would show this to be correct on the premises indicated.

THE Edison inventories were obtained in another fashion, *viz.*, by the application of multipliers in column 11 to column 5. Proof of the conformity of the

COMMONWEALTH EDISON COMPANY

(A) DEMONSTRATION OF VALIDITY OF USE OF ORIGINAL BOOK COST AS INVENTORY
(B) DEMONSTRATION OF APPLICATION OF INDICES TO OBTAIN REPRODUCTION COST
(C) COMPARISON OF METHODS FOR DETERMINING WEIGHTED AGE

I.C.C. #41130
Commerce Commission
Engineering Staff
Exhibit No. 2

I.C.C. #40772
Exhibit 13
Unit Costs 12-31-52

Middle States Telephone Company Of Illinois
DesPlaines Exchange - 243 - Exchange Aerial Wire

Work Sheet Demonstrating Method of Determining Condition of Property by Straight Line Method

Line No.	Year Inst. (1)	Additions (2)	Retirements (3)	Adjustments (4)	Surviving Property (5)	Exchange Wire Construction Index (6)	Surviving Property Stated In Terms Of Uniform Dollar Amount (7)	Ratio (7A)	Age (Years) (8)	Dollar Years (9)	Average Weighted Age (Years) (10)	Edison Method: Surviving Property Multiplier (11)	Restated At 1-1-53 Price Level Amount (12)	Ratio (12A)	Dollar Years (13)	Average Weighted Age (Years) (14)	Line No.
1	Prior to 1927	$ 6,023.51	$	$ 6,023.51													1
2	1927	3,580.25	2,386.82	3,580.25													2
3	1928	3,464.13	627.65	3,464.13													3
4	1929	2,627.40	414.67	2,627.40													4
5	1930	3,584.24	2,205.16	3,584.24													5
6	1931	4,408.01	1,290.40	4,408.01													6
7	1932	6,732.51	2,439.05	6,732.51													7
8	1933	1,285.23	7,251.47	1,285.23													8
9	1934	893.40	158.49	893.40													9
10	1935	1,063.18	282.46	1,063.18													10
11	1936	4,217.65	2,479.19	4,217.65													11
12	1937	3,142.63	1,253.98	2,075.74	$ 1,066.89	105.9	$ 1,007	7.0	15	$ 15,105		2.36	$ 2,518	7.0	$ 37,768		12
13	1938	1,372.93	2,466.19		1,372.93	106.8	1,286	8.9	14	18,004		2.34	3,213	8.9	44,997		13
14	1939	2,431.70	435.63		2,431.70	107.8	2,256	15.7	13	29,328		2.32	5,642	15.7	73,340		14
15	1940	2,095.31	424.99		2,095.31	108.7	1,928	13.4	12	23,136		2.30	4,819	13.4	57,831		15
16	1941	2,524.46	2,431.32		2,524.46	112.2	2,250	15.6	11	24,750		2.23	5,630	15.6	61,925		16
17	1942	250.08	1,636.70		250.08	116.1	215	1.5	10	2,150		2.15	538	1.5	5,377		17
18	1943	615.65	413.55		615.65	119.4	516	3.6	9	4,644		2.09	1,287	3.6	11,580		18
19	1944	412.83	196.58		412.83	121.1	341	2.4	8	2,728		2.06	850	2.4	6,803		19
20	1945	171.00	2.28		171.00	122.9	139	1.0	7	973		2.03	347	1.0	2,423		20
21	1946	416.25	300.67		416.25	131.5	317	2.2	6	1,902		1.90	791	2.2	4,745		21
22	1947	1,705.23	4,317.93		1,705.23	151.7	1,124	7.8	5	5,620		1.65	2,814	7.8	14,068		22
23	1948	456.30	2,171.64		456.30	185.6	246	1.7	4	984		1.35	616	1.7	2,464		23
24	1949	1,162.59	1,578.60		1,162.59	193.7	600	4.2	3	1,800		1.29	1,500	4.2	4,499		24
25	1950	2,568.35	1,481.86		2,568.35	209.4	1,227	8.5	2	2,454		1.19	3,056	8.5	6,113		25
26	1951	1,733.72	953.00		1,733.72	229.5	755	5.3	1	755		1.09	1,890	5.3	1,890		26
27	1952	420.76	354.97		420.76	249.9	175	1.2	1/2	88		1.00	421	1.2	210		27
28		$59,359.30	$39,955.25	$39,955.25	$19,404.05		$14,382			$134,421	9.35		$35,932		$336,033	9.35	28

NOTE: Line numbers added for reference

two methods is shown by the identical ratios in columns 7-A and 12-A for each year to the totals in line 28 of columns 7 and 12. The surviving property records of units under the Edison Company methods are kept by actual count and dollarwise and not on the first-in, first-out procedure used in columns 2 to 5, inclusive.

Referring to the method for obtaining trended values through the medium of restating original cost in current dollars: total of column 12, line 28 (Exhibit #2), restates as at January 1, 1953, the property then surviving installed in the years 1937-52, inclusive, in the amounts indicated in column 5. The total of column 7, line 28, multiplied by the 1952 index of 249.9 in column 6, line 27, will likewise produce the same amount provided the calculations are carried to enough digits.

THE weighted age of the units installed was obtained as demonstrated in Exhibit #2. The years in column 8 were multiplied by the dollars in column 7 and 12 to obtain, respectively, the dollar years in columns 9 and 13. These dollar years in total (line 28) divided by the total dollars in columns 7 and 12 produced the years in columns 10 and 14. It is to be noted that this procedure results in a weighted age for the property units as distinguished from an age for the dollars invested because of the prior application of indices of construction (or their multipliers) to the surviving property dollar amounts in column 5. The ages so obtained were transferred from work sheets for each property account to column D-1, Exhibit #1.

The company in preparing the data used a more accurate method than indicated in Exhibit #2 in assuming that the net surviving property for each year was installed on the average for a period of six months.

THE major remaining procedure needing explanation deals with the estimated service lives appearing in column D-2, Exhibit #1, assigned to the property accounts.

The factors of depreciation for each account and the causes therefor were weighted. These factors include climatic, soil, atmospheric, and economic conditions, operating and maintenance policies and their implementation by the company. The design and technological characteristics for the various eras and ratio of property therein to the whole were also considered as were the relative efficiencies and other related economic factors. The accuracy of these estimates depends upon the knowledge and experience of the engineer, the research expended, and the equitable weighting of the factors involved.

Some special procedures were used as follows:

(1) Principal sites and large tracts of land were appraised. The book values of those unappraised were adjusted in the same ratio as the appraised bore to their original costs.

Prices of individual tracts and rights vary so drastically over the years, amongst other reasons because of deterioration or appreciation of location, that no reasonable value as of a date certain can be placed on any specific parcel except by appraisers.

(2) Some buildings were appraised, the balance trended.

(3) A complementary economic

study was made of the thermal electric production system to determine its obsolescent value for comparison with the depreciated value obtained by the "straight-line" method. Only a nominal difference in value resulted, which is important, as it proves the accuracy of the economic factors, including technological improvement employed in resolving the estimated life of this important account; additionally significant in that it denies that future property values must be prognosticated as claimed by some opponents of the reproduction cost theory. Historical *depreciated* reproduction cost is the vehicle herein recommended.

Stabilization of earnings is indicated from employment of economic depreciation during high and low price levels.

The obsolescent study compared the original cost of the existing plant with present cost for a composite modern plant. It also compared fuel, operating, and maintenance costs, depreciation, interest, insurance, and tax charges. Expenses for operations, depreciation, etc., for the existing plant amounted, in the aggregate, to substantially more than for the modern plant. This differential was subtracted from the gross income available to the modern plant to arrive at the economic earnings for the existing system and was capitalized to arrive at the obsolescent value.

Recommended Procedures

THE methods described will suffice in the main for all utility companies. The following alternate procedures are recommended under the circumstances noted:

(1) When it is not feasible to appraise land parcels, original costs or the cost-of-living index may be applied to book values. In the Edison Case the appraised values were 40 per cent greater on the average than the book costs, whereas the cost-of-living index would have given a 54 per cent increase.

(2) Whenever construction cost indices are used for buildings, care must be exercised that remodelings and additions are adjusted to eliminate above normal costs. Conditioning such structures will reflect improvements, but no matter when the additions were constructed they will have no greater service life than the structures as a whole.

(3) Indices reflecting company experience, where available rather than general regional costs, could be preferable.

(4) The application of indices should be applied to reduce original costs to a common denominator. This procedure will facilitate periodical conversion to any cost level at any cut-off date desired.

(5) For telephone companies, the inventory of the station installation and drop and block wire accounts can be obtained from station development. Unit costs will need be applied to these quantities. Their age determination requires studies of the facts. The station apparatus accounts require analysis truly to reflect age. History provides much-needed information for calculating the obsolescent features of depreciation for COE.

Washington and the Utilities

The FPC Gas Freeze Order

WASHINGTON observers were somewhat surprised when the Federal Power Commission, by a vote of 3 to 1, decided to freeze field prices on natural gas production for interstate commerce even before the commission had received the mandate of the U. S. Supreme Court in the Phillips Petroleum Company decision of June 7th. The commission acted on July 16th in the form of an order describing regulations to govern an estimated 4,100 independent producers and gatherers of natural gas which, the commission said, "may come within the category" found by the court in the Phillips Case to be subject to FPC jurisdiction.

The new rules and regulations apply to transactions and operations conducted on and after June 7th, the date of the Supreme Court decision. Sales contracts which were in effect as of that date are to be filed with the FPC by October 1st. No increase in these rates can be made unless it is first filed with the FPC, which can suspend the proposed higher rates pending hearing and decision. In addition, the new regulations require the producers to file applications for certificates authorizing the transportation and sale of natural gas in interstate commerce. The certificate applications also must be filed by October 1st.

The commission said the Supreme Court decision was, of itself, notice to all independent producers of their responsibilities and duties under the Natural Gas Act. However, the FPC said that it recognizes that there may be areas of uncertainty and a few situations "where independent producers have, in good faith, endeavored to invoke a price increase provided in a sales contract executed prior to June 7, 1954, or in good faith taken other steps since said date without commission approval . . ."

THE commission pointed out that any action which requires its approval is not effective without it. But the FPC added that it will do all it can to assist in adjusting any such matters, "without unnecessary punitive action, to the end that all independent producers will receive like treatment as of June 7, 1954, henceforth."

The new rules specifically provide that

any change in a rate schedule must be filed with the FPC at least thirty days, but not more than sixty days, in advance. However, any change occurring between June 7th and September 15th as the result of provisions in a rate schedule which was in effect on June 7th may be filed without the thirty days' prior notice. If the FPC suspends a change in this latter category, the suspension period will begin with the designated effective date of the change. Producers initiating interstate service subsequent to June 7th must file their rate schedules with the FPC not less than thirty nor more than sixty days prior to the date of commencement of such operations, the rules provide.

The commission's order sets forth the information and date which the producers must submit with each proposed rate change. Any proposed rate increase must be supported by a statement. The new certificate regulations affect every independent producer who has engaged in the interstate transmission or sale of natural gas subject to FPC jurisdiction on or since June 7th. The rules prevent the producers from engaging in new service and from abandoning present service without first obtaining permission from the FPC.

THE rules specify the form and contents of certificate applications, outlining what information and exhibits should be included. A special abbreviated form has been drawn up for those producers whose sales total less than one billion cubic feet annually. The commission said that, until further order, its accounting requirements will not apply to the independent producers. Commissioner Seaborn L. Digby dissented from the commission's order, and Commissioner Frederick Stueck was not present and therefore did not take part in the action.

Commissioner Digby expressed the opinion that the majority had exceeded its rule-making authority. He said that the June 7th effective date is in violation of the Natural Gas Act, which prohibits the fixing of rates retroactively. He also declared that the producers are being deprived of an opportunity to file as an original rate schedule a sales contract in which the price of gas has increased since June 7th. Original rates cannot be suspended by the FPC and the company is entitled under the law to collect the filed rate pending investigation and final commission determination, he pointed out. In these and other particulars, he asserted, the FPC's order may deprive the producers of their rights of due process of law.

Commissioner Digby said that FPC records show that about 61 companies are responsible for approximately 80 per cent of all gas being sold in interstate commerce, with the remaining 20 per cent sold by the small producers. He said that a "more prudent approach to our regulatory responsibility" would be to institute separate proceedings with respect to the 61 companies, with the right of public hearing. While he said that he was not suggesting that the smaller producers be excused from regulation, Commissioner Digby declared that the rules should be greatly simplified for them and that ample time should be given for compliance.

AMONG other things, he also questioned the majority's action in refusing an opportunity to the producers to withdraw from any transaction which makes them subject to FPC regulation, and in requiring permission for the abandonment of facilities which have not been certificated.

On July 12th President Eisenhower requested Congress to appropriate an extra $300,000 for the FPC in a supplemental appropriation bill to meet the expense of the FPC's expanded duties resulting from

the Phillips decision. A last-minute effort on the part of Texas and New Mexico to have the court stay its mandate was not expected to succeed. Although a stay could be granted by one Justice during the court's summer recess, such petitions invariably go to a Justice who sided with the majority.

Protest from Texas

TEXAS Attorney General John Ben Shepperd charged that the FPC order freezing natural gas prices "means financial ruin for a large segment of the Texas natural gas industry." Shepperd joined members of the railroad commission in denouncing the order freezing field prices of natural gas sold in interstate commerce at their June 7th level.

"Hundreds of small one-well producers will be so wound up in federal red tape and regulations that they must give up and go out of business," Shepperd said. The attorney general commented that the FPC's order means "price fixing for the out-of-state consumer of Texas' natural resources."

Railroad Commission Chairman Ernest O. Thompson said the order will work "greatly to the detriment of Texas and other states." Shepperd expressed "keen disappointment" that the FPC had acted before the U. S. Supreme Court heard a Texas motion for rehearing in the Phillips Petroleum Company Case.

Preference Clause Loses In Test Vote

THE Holmes Bill (HR 7664) for "partnership" (federal-local) construction of Priest Rapids dam on the Columbia river (Washington) is on its way to the President's desk. The bill, passed by the Senate last month, permits the Grant County Public Utility District to build a hydro dam under an FPC license. The proposed hydro dam's cost is estimated at $360,000,000.

The Senate, in approving the measure, turned down suggested amendments to the bill which would require all sales of power to be made in accordance with the preference clause of the Flood Control Act of 1944. The wording of the bill was changed to prevent the Bonneville Power Administration from becoming the exclusive purchaser of surplus power from the project. Under the Senate-approved version, either public or private power marketing agencies will have equal access to surplus power.

THE Senate vote to reject a preference clause for *local* public agencies (non-federal) was not entirely indicative of Senate sentiment on the over-all policy of requiring a priority in favor of public agencies purchasing power from public projects. It was pointed out that this bill was already in favor of a public agency (Grant County PUD) as the licensee operating the whole project, and that a further preference clause would simply hamstring the licensee's discretion in selling power.

For this reason, five Democrats—Byrd (Virginia), Lennon (North Carolina), McCarran (Nevada), Robertson (Virginia), and Stennis (Mississippi)—joined forty Republicans in rejecting such a secondary preference sought by Senator Magnuson (Democrat, Washington). One Republican, Langer (North Dakota), and Morse (Independent, Oregon) joined twenty-seven Democrats in favor. The vote thus shapes up largely as a party issue.

Wire and Wireless Communication

NLRB Completes Rules Revision

THE National Labor Relations Board has announced additional rules further curtailing its jurisdiction over disputes involving defense industries, newspapers, radio and television stations, retail stores, public utilities, and transit companies. Several weeks ago the board issued a list of specifications for certain other industries. (See PUBLIC UTILITIES FORTNIGHTLY, July 22nd issue.) A new list, issued July 14th, substantially completes the board's revision of standards for who and who cannot use its services.

The new standards for each industry are generally as follows:

1. National Defense: To come under NLRB jurisdiction, a defense industry must supply at least $100,000 a year in goods or services under government contracts relating directly to national defense. Formerly, the board took jurisdiction in the case of any company doing work "affecting" national defense.

2. Radio and Television Stations: The gross revenue of radio and television stations must be at least $200,000 annually to come under the board's jurisdiction. Formerly the board handled the cases of any stations whose operations affected interstate commerce.

3. Public Utility Companies and State Public Transit Systems: The board will assert jurisdiction if the company does a gross business of at least $3,000,000 a year. It will take jurisdiction of interstate transit systems if their gross revenue from interstate operations is at least $100,000 a year. Formerly, the board took all utility and transit system cases when their operations affected interstate commerce.

REA Phone Loans Reach New High

THE Rural Electrification Administration loaned nearly $75,000,000 in fiscal 1954 for improvement and extension of rural telephone service. The total of $74,712,000 in telephone loan allocations during the year ended June 30, 1954, is the highest for any year since the REA telephone program began in October, 1949. It is also nearly double the $41,973,000 of loan allocations in the previous fiscal year. REA has now allocated loan funds to a total of 279 borrowers, of which 128 are commercial-type borrowers and 151 co-operatives.

"Naturally, we are pleased at the high level of loans handled by the smaller REA staff," REA Administrator Ancher Nelsen said in reviewing the year's record, "but

the amount of money which we lend in a given period is only part of the picture when we look at electric power and telephone service for America's farms. Even more important to us than the record of money lent is the result achieved with the loan funds. We are confident that reports on borrowers' construction programs and operations, when they arrive, will show this fiscal year to be an outstanding year of electric and telephone progress for people in rural areas."

The backlog of telephone loan applications totaled $112,700,000 at the end of fiscal 1953. On June 18, 1954, this had been reduced to $85,000,000, or more than $27,000,000 less than last year. A breakdown of telephone loans by states shows that the bulk of REA loan funds are going to those states served by independent companies. States leading in phone loan allocations are as follows: North Dakota ($7,312,000); Minnesota ($6,829,000); Alabama ($6,270,000); South Dakota ($5,547,000); Tennessee ($4,463,000); Missouri ($3,745,000); Illinois ($3,730,000); Texas ($3,646,000); South Carolina ($3,586,000); and Kentucky $3,240,000).

Pacific Tel & Tel Wins Partial Rate Increase

THE California Public Utilities Commission has approved only about one-fifth of a rate increase requested by the Pacific Telephone & Telegraph Company in authorizing higher charges for intrastate toll, message unit, and some other services intended to enable the company to earn $11,100,000 additional gross revenue annually. The company had sought an increase of $53,566,000. Most of the added revenue will come from higher intrastate toll rates ($4,916,000) and from a raise in message unit rates for calls from one exchange to another exchange within the Los Angeles extended area ($4,860,000), a total of $9,776,000. Remainder of the increase will come from reclassification of 60 exchanges ($380,000); higher foreign exchange rates ($620,000); and increased rates for extra or special directory listings ($324,000).

The commission found to be reasonable a 6.25 per cent rate of return instead of the 7.6 per cent rate the company had sought. The company's major contention was that rates should be raised considerably because of inflation and devaluation of the dollar. The commission observed that "such action would protect only one class of security holder, the common stockholder" and "would penalize the ratepayer without a concomitant consideration." The commission declared that "The law contemplates that people who buy securities are charged with the knowledge that certain risks will be attached to their ownership and that one of the risks is the possibility of the decline in purchasing power of the dollar."

IT was further pointed out by the commission that "only 18 per cent of the plant as it existed at the end of 1952 was financed with the preinflationary dollars which prevailed prior to 1941," and that the company has been authorized to recover in depreciation charges the inflated dollars it has invested in its business. The opinion concluded that the company had received adequate consideration from the commission in fixing rates under its traditional method. "The record shows," said the commission's opinion, "that applicant has been able to finance itself under reasonable terms during the inflationary period."

One criticism leveled at the company in the commission's decision was sure to provoke discussion within the telephone industry. The opinion noted the change in

position of a number of parties from protestants to interested parties or to neutral parties during the course of public hearings. The commission stated: "By communication and by comment of counsel it was alleged that applicant sent its officials out to certain individuals and groups for the purpose of discouraging appearances before the commission, even to the point of endeavoring to dissuade them from bringing their protests and problems to the commission."

The company stated its conduct in this regard was necessary in order for these parties to understand all of the facts regarding its business before taking a position. Although the company claimed a constitutional right to do so, the commission said that "to interfere with a party or a witness in a proceeding before this commission is no different than such action would be before a court. The basic public policy underlying the function of this commission is to provide a place where all public utility customers may come with their problems and protests . . . Action which is intended to dissuade subscribers from appearing at public hearings or filing written statements is inconsistent with the policy of this commission and, in our opinion, is not in the public interest."

In reaching its decision, the commission also denied PT&T a request for so-called equal statewide rates based on station availability, or the number of persons who may be called without toll charge. It refused to allow for rate-making purposes the entire amount of one per cent of total operating revenue paid by the company to the American Telephone and Telegraph Company as a "license fee." Payment to AT&T was based on an allocation of cost of services performed, instead of a percentage. The commission also disallowed $14,000,000 on purchases from Western Electric Company. Said the commission:

> Our general conclusion with regard to the subject of Western Electric Company is to reiterate the position adopted by this commission in previous decisions that an affiliated manufacturing company should not be permitted unreasonably to profit at the expense of a public utility where the manufacturing company is owned and controlled by the same interests which own or control the public utility. To assure that the utility's ratepayers will not be unduly burdened, the manufacturer's profits, for rate-making purposes, should be adjusted to be no greater than that allowed the utility. In our opinion all of the adjustments made by the staff are reasonable and they are adopted for rate-making purposes.

A cutback by the company in its construction program for 1954 drew criticism from the commission. The commission acknowledged that following World War II PT&T did not have the materials to provide the plant margins and take care of all possible held orders. But, the commission declared, "There is indication in the record that the applicant has elected to serve first the business that indicated good return on the investment and left the less economic business to stand unserved. Many of the held orders are undoubtedly due to large subdivisions being conceived and built in a few months whereas it takes many months to engineer and construct telephone plant and interconnect it with all of the existing plant." The commission said it was "not pleased" at the record which shows that PT&T has cut its proposed 1954 gross construction program back from $199,157,000 to $161,900,000, despite the large backlog of held orders. The company explained its action as resulting from an estimated falling off in new net demand for main telephone service with a leveling of the business cycle.

Financial News and Comment

BY OWEN ELY

The Continuing Debate over Public Power

THE present administration at Washington has shown a definitely conservative trend on the public power question, but it takes time for this philosophy and policy to permeate the various commissions, boards, and authorities, and there are still many public power bloc proponents in Congress and elsewhere. Only recently Gordon Clapp, who had continued his zealous advocacy for public power at the expense of private industry, was eased out of his position as TVA chairman when his term expired. However, the proposal that TVA should buy some future power requirements (for the Atomic Energy Commission) from Middle South Utilities and The Southern Company, instead of building more big steam plants of its own, has recently stirred up a teapot tempest in Congress.

TVA is already the biggest integrated power system in the world and generates about 5 per cent of the total U. S. output. It has been anxious to build another huge steam unit to supply future AEC needs, which would cost $100,000,000, but the administration has decided to buy this power from private utilities. New Deal Congressmen claim this is a "giveaway" to private power interests, but the fact is that it would add only about one cent a share to the earnings of Southern Company and perhaps three cents to Middle South.

Alabama Power (Southern Company subsidiary) has been authorized to build five new dams along the Coosa river at a cost of $100,000,000. (Presumably, this figure includes flood-control and navigation contributions by the federal government.) This 360,000-kilowatt project might tie in with the plan to sell power to TVA, although a $107,000,000 steam plant is also planned at West Memphis, Arkansas, to be built jointly by Southern and Middle South.

IN the Pacific Northwest, private utilities account for 2,600,000-kilowatt capacity, federal agencies (principally Bonneville) 3,000,000 kilowatts, and the PUD's and cities 1,100,000 kilowatts. The federal development program will continue so far as authorized projects are

DEPARTMENT INDEX

concerned but local interests, both public and private, are now being encouraged to tackle some big projects for future development.

The picture has been somewhat confused by the differences between Frank McLaughlin of Puget Sound Power & Light and Kinsey Robinson of Washington Water Power, who sought to acquire Puget by merger.

PUGET SOUND in co-operation with the lighting departments of Seattle and Tacoma, and the Snohomish and Chelan Public Utility districts, has formed a "Puget Sound Utilities Council." A great deal of local support for this project has been enlisted. The five utilities are putting up $40,000 for an independent survey to investigate various potential power sites. When this is completed, members will have to agree to go ahead on whatever project is considered most important, but its actual financing and building would be handled by the utility serving that area. The other four utilities would sign contracts to buy a certain amount of power to be generated at the site, thus guaranteeing a market for the power and aiding the financing of the project.

The Puget Sound Utilities Council would thus be at work in the northwestern part of the state, which is cut off from the eastern part by the Cascade mountains, and is north of the Columbia river

Four private utilities (Washington Water Power, Pacific Power & Light, Montana Power, and Portland General Electric) have set up a joint subsidiary, Pacific Northwest Power, to investigate several big power sites in other areas and plan for their development. The company has already filed an application with the FPC to develop power sites on the Clearwater river in northern Idaho, with an estimated capacity of 536,000 kilowatts. Washington Water Power itself is planning another big dam (capacity 350,000 kilowatts) at Noxon Rapids on the Clark Fork river, 25 miles above the big Cabinet Gorge hydro project completed sometime ago.

ANOTHER organization is the Pacific Northwest Governors Power Policy Committee, which has given the Department of the Interior a report listing needed hydro projects, several of which would be developed jointly by the federal government and local utilities.

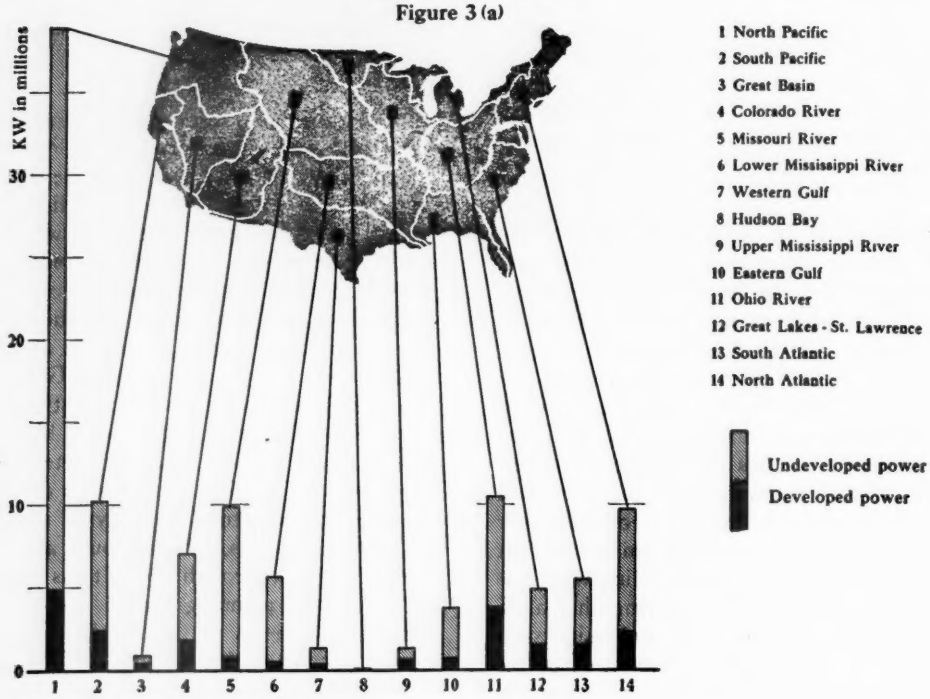
Formerly, the government was the exclusive builder of big multipurpose dams in the Pacific Northwest, including Grand Coulee and Bonneville on the main stream of the Columbia river. It appears likely that Washington will also complete the Chief Joseph, McNary, and Dalles dams on schedule, with total capacity of some 2,400,000 kilowatts, which should about meet area needs through 1960. It has been estimated that planning should begin on additional projects of 3-3,500,000 kilowatts for construction during 1960-64 in order to meet area needs by the latter date. Additional "authorized" projects, on which construction has not yet begun and for which funds still have to be appropriated, would account for another 2,600,000 kilowatts, the principal dams being Priest Rapids, John Day, Libby, etc. Hell's Canyon (see page 155) is another important project.

However, it is said that eastern and southern members of Congress are becoming reluctant to appropriate funds for projects on the Columbia river to serve industries competing with those in their own regions. But if private utilities raise some 80 per cent of the total requirements, it is thought that the remaining 20 per cent (for navigation, irrigation, etc.) can be more easily obtained from Con-

EXISTING AND UNDEVELOPED HYDROELECTRIC POWER

January 1, 1953
By Major Drainages

Figure 3 (a)



Federal Power Commission, "Hydroelectric Power Resources of the U. S."

gress. There is some talk of the private power group taking over the $320,000,000 John Day project on the Columbia river in partnership with the federal government. (Originally, Portland General Electric was supposed to handle the project.)

THE Northwest Power Pool, which has been in existence for some years, representing both public and private power producers, is another factor in development plans. The pool has proved its value by "firming" 600,000 kilowatts of power which might be lost if individual producers operated separately. The FPC, the Army Corps of Engineers, and the Bureau of Reclamation are also tied in with the northwestern development program.

Recently, the administration decided to revive the plan for the $263,000,000 Libby dam in northwestern Montana on the Kootenai river, a Canadian-U. S. tributary of the Columbia. Since the river waters will be backed into Canada by the dam, the project must be resubmitted to Canada through the International Joint Commission. This is considered the largest storage project remaining to be built in the Pacific Northwest. By providing regu-

lated stream flow, it will provide over 800,000 kilowatts additional power for the big federal dams already built on the Columbia river. The project would also provide flood control. Construction was authorized in 1950 by Congress but only planning funds have thus far been voted.

The newly formed Governors Power Policy Committee is designed to handle four major Northwest problems and to speed present projects—the problems are appropriations to keep projects on schedule, new starts, allocation of benefits between headwater and downstream states, and agreement with British Columbia to clear the way for Libby dam. This huge dam has been delayed for years because Canada and the U. S. could not agree on a division of benefits. The governors will also ask for added appropriations to eliminate indicated one-year slippages in completing Chief Joseph and The Dalles dams.

THE FPC has now ended about a year's hearings over the controversial Hell's Canyon project on the Snake river at the Idaho-Oregon border. The New Deal favored a huge federal project with an estimated cost of around $400,000,000, but the Interior Department has withdrawn from the fight, leaving it to the FPC to decide whether Idaho Power Company should proceed with its 3-dam proposal which, it is estimated, would cost far less than the one huge multipurpose dam proposed by former Secretaries of the Interior Julius Krug and Oscar Chapman. Several public power groups led by former New Dealers have continued the fight, swelling the hearings' transcript to over 4,000,000 words. While a decision by the FPC examiner is expected about the first of next year, appeals to the commission itself, and perhaps later to the courts, may delay the outcome.

Work is progressing on the huge Missouri valley project, which the Truman administration never succeeded in turning into an authority. The whole area covers ten states and one-sixth of the country, but contains only 5 per cent of the population and has been backward industrially. The map of the valley is dotted with 137 proposed dams which would probably take another fifty to seventy-five years to complete. The present program, developed under the "Omaha Compromise" of 1944, will cost an estimated $1.3 billion compared with an $11 billion cost estimate for the entire valley project.

Six dams are now being built, with four about finished—Fort Randall, Fort Peck, Garrison, Canyon Ferry, Gavins Point, and Oahe. The first of Fort Randall's eight 40,000-kilowatt generators recently came into operation, and through 1956 some 325,000-kilowatt capacity is expected to become available. Eventually, preference customers think they could use 523,000 kilowatts, and private utilities 224,000 kilowatts. The Interior Department wants the public agencies to enter into 20-year contracts in return for their preference rights, but the co-ops do not want to look so far ahead.

LOCAL utilities in the valley referred to the new developments in their annual reports. Black Hills Power & Light Company reported the first delivery of Missouri river power into its territory by the Bureau of Reclamation; the company wanted to "wheel" this power to the preference customers, but the bureau decided to send it over a single circuit line, which may not prove dependable. Iowa Public Service's report stated "the development of the Missouri river basin by the government, although claimed by zealots to be for navigation, flood control, irrigation, and power purposes, has progressed

PUBLIC UTILITIES SECURITIES OFFERED FOR SUBSCRIPTION AND/OR SALE

(000 omitted)

	January 1 to June 30, 1954				
	Total	*Electric Companies*	*Gas Companies*	*Telephone Companies*	*Other Companies*
Long-term Debt					
Offered Publicly	$1,179,500	$ 810,000	$344,500	$ 25,000	—
Offered through Subscription	95,350	45,350	50,000	—	—
Offered Privately	171,950	77,300	55,900	27,450	$11,300
Total	$1,446,800	$ 932,650	$450,400	$ 52,450	$11,300
Preferred Stock					
Offered Publicly	$ 254,033	$ 229,823	$ 11,010	$ 12,300	$ 900
Offered through Subscription	5,042	5,042	—	—	—
Offered Privately	42,950	35,450	—	3,500	4,000
Total	$ 302,025	$ 270,315	$ 11,010	$ 15,800	$ 4,900
Common Stock					
Offered Publicly	$ 144,328	$ 78,003	$ 46,663	$ 19,662	—
Offered through Subscription	227,718	191,202	15,842	20,674	—
Total	$ 372,046	$ 269,205	$ 62,505	$ 40,336	—
Total Financing	$2,120,871	$1,472,170	$523,915	$108,586	$16,200
Segregation of Financing—By Purpose					
Total Refundings	$ 356,438	$ 301,638	$ 54,000	$ 800	—
Total Divestments	$ 49,509	$ 1,926	$ 39,638	$ 7,945	—
New Money					
Long-term Debt	$1,167,159	$ 711,804	$396,400	$ 47,655	$11,300
Preferred Stock	220,433	189,523	11,010	15,000	4,900
Common Stock	327,332	267,279	22,867	37,186	—
Total New Money	$1,714,924	$1,168,606	$430,277	$ 99,841	$16,200
Total Financing	$2,120,871	$1,472,170	$523,915	$108,586	$16,200
Segregation of Financing—By Type					
Competitive Bidding	$1,158,271	$ 917,334	$215,937	$ 25,000	—
Negotiated Sales	$ 419,590*	$ 200,492	$186,236	$ 31,962*	$ 900
Subscription					
Competitive Bidding	$ 110,917	$ 60,917	$ 50,000	—	—
Negotiated Sales	80,349	64,486	1,957	13,906	—
No Underwriting	136,844	116,191	13,885	6,768	—
Total Subscriptions	$ 328,110	$ 241,594	$ 65,842	$ 20,674	—
Private Sales	$ 214,900	$ 112,750	$ 55,900	$ 30,950	$15,300
Total Financing	$2,120,871	$1,472,170	$523,915	$108,586	$16,200

* Includes $1,500,000 preferred stock not underwritten.

Ebasco Services Incorporated.

steadily with great stress on power development." However, the company is trying to buy some of the Missouri power and is also negotiating with the government for wheeling of power to preference customers. The report of Missouri Public Service Company gives an unfavorable slant, reproducing a newspaper heading "Power hope dim—promise of cheap electricity not fulfilled, agency reports reveal —drain on the taxpayers."

PRESIDENT Eisenhower's Cabinet Committee on Water Policy has also decided to press for congressional approval of the Upper Colorado river storage project, including the controversial Echo Park dam (in the Dinosaur National Monument). Bureau of Reclamation engineers have been working on this project for many years and it is said to surpass TVA, Bonneville, etc., in complexity and cost. Echo Park and Glen Canyon dams would add about 1,000,000-kilowatt capacity, irrigate 380,000 acres of land, and cost perhaps $1-$2 billion. It's a long-term project with completion scheduled around 1980. Initial hearings on the program were held before a House committee in January. It is contended that this "Republican TVA" would provide for vast new farm acreage, and open up new industries based on phosphate rock for fertilizer and oil shale for fuel. However, there has been considerable opposition to Echo Park by those who wish to keep the Dinosaur area intact for tourists. Raymond Moley in *Newsweek* has also been critical of the whole project. A report of the Army Engineers made in 1951, which has just come to light this year, is said to be critical regarding the economic justification for the project.

In the East, public power advocates seem to be having their best innings for success. The big St. Lawrence power development, which can now get under way after the final approval of the seaway program, will be built by the New York State Power Authority, headed by Robert Moses. This will take six to eight years to complete and is expected to produce 12.6 billion kilowatt-hours annually, half going to Canada and half to the United States; the U. S. portion will be allocated principally to the New England states and New York. Canada is short of power along the northern shore of Lake Ontario. Upper New York and New England are not short of power, but will obviously benefit by any cheaper power supply.

THE power development on the Niagara river—doubtless often confused with the St. Lawrence project—has long been planned by Niagara Mohawk Power, which heads a group of New York utilities which are ready to finance and build the project. But the New York State Power Authority thinks it should get this job also, and Bob Moses, in his forceful way, has had some harsh words to say about the private utilities despite the fact that Niagara Mohawk has been working on the plan for decades. A bill was passed by the House last summer favoring the private utility group. The Senate has not made any definite decision although a committee has proposed passing the buck to the Federal Power Commission. It looks as though the issue might go over to 1955. The annual reports of Niagara Mohawk, New York State Electric & Gas, and other members of the group have devoted considerable attention to the project.

In New England, where the Interior Department during the Truman régime made a propaganda drive for a program of public power development, the fight appears to have quieted down. However, a curious development is the attempt to revive one of the abandoned New Deal

projects, the Passamaquoddy bay tidal basin near Eastport, Maine—familiarly known as 'Quoddy. The Senate has apparently authorized $3,000,000 for a final survey of the feasibility of this 30-year-old project. It is to be hoped, in any event, that the government will not again waste money on housing and other boondoggling projects in connection with this development. It has been estimated that, if completed, 'Quoddy could produce some 3 billion kilowatt-hours per annum by harnessing the tremendous high tides, in similar fashion to a hydro project. But economic feasibility is the major problem.

A RECENT FPC document of 168 pages (from which the chart on page 154 was reproduced) indicates that only about one-fifth of U. S. hydroelectric resources have been developed thus far. Of about 110,000,000 kilowatts said to be available, only about 22,000,000 kilowatts have been developed, producing about 113 billion kilowatt-hours annually. About 44 per cent of hydro power thus far developed is west of the Rocky mountains and about 54 per cent of the undeveloped potential power is also west of the Continental Divide—largely in the Colorado river basin. However, the report does not mention that hydro power last year could be used only about 60 per cent of the time on the average because of lack of adequate rainfall or water storage facilities in some areas. In many cases steam plants must be maintained in readiness to supply power when hydro facilities fail due to lack of rainfall. Modern steam plants, which cost less to construct, can be run around the clock, with some time out for periodic overhauls or emergency breakdowns.

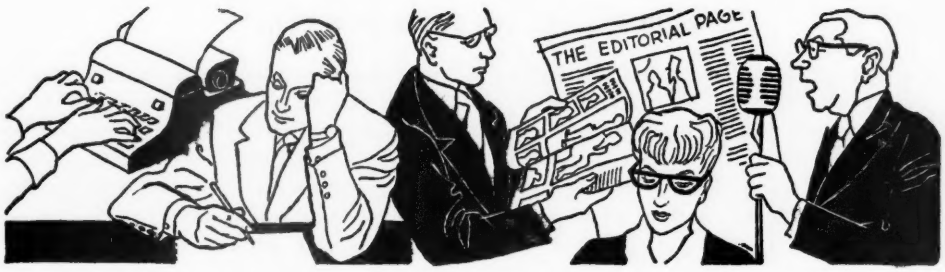
DATA ON ELECTRIC UTILITY STOCKS

1953 Rev. (Mill.)			7/14/54 Price About	Div. Rate	Current Yield	Share Earnings* Cur. Period	% Increase	12 Mos. Ended	Price-Earns. Ratio	Dividend Pay-Out	Moody Bond Rating
$223	S	American Gas & Elec.	38	$1.64#	4.3%	$2.37**	D5%	May	16.0	69%	—
31	O	Arizona Public Service	20	.90	4.5	1.38	24	May	14.5	65	—
8	O	Arkansas Mo. Power	22	1.12	5.1	1.58	D12	Mar.	13.9	71	—
25	S	Atlantic City Elec.	34	1.50b	4.4	1.91	18	May	17.8	79	Aa
5	O	Bangor Hydro-Elec.	32	1.80	5.6	2.13	23	Mar.	15.0	85	—
4	O	Black Hills P. & L.	23	1.28	5.6	2.06	19	Apr.	11.2	62	—
82	S	Boston Edison	54	2.80	5.2	2.96	D1	Dec.	18.2	95	Aaa
18	A	California Elec. Power	12	.60	5.0	.88	7	Mar.	13.6	68	A
14	O	Calif. Oregon Pr.	28	1.60	5.7	1.97	19	May	14.2	81	A
6	O	Calif.-Pacific Utilities	27	1.40	5.2	2.10	5	May	12.8	67	—
52	S	Carolina P. & L.	22	1.00	4.5	1.55	7	May	14.2	65	A
21	S	Central Hudson G. & E.	14	.70	5.0	.95	18	Mar.	14.7	74	—
15	O	Central Ill. E. & G.	30	1.60	5.3	1.99	D6	Mar.	15.0	80	A
29	S	Central Ill. Light	44	2.20	5.0	2.83	D2	May	15.5	78	Aa
40	S	Central Ill. P. S.	23	1.20	5.2	1.48	7	Mar.	15.5	81	A
9	O	Cent. Louisiana Elec.	25	1.20	4.8	1.53	3	Mar.	16.3	78	Baa
27	O	Central Maine Power	22	1.20	5.5	1.73	25	May	12.7	70	A
96	S	Central & South West	27	1.16	4.3	1.74	15	Mar.	15.5	67	—
9	O	Central Vermont P. S.	16	.84	5.3	.96	3	May	16.7	87	A
89	S	Cincinnati G. & E.	23	1.00#	4.4	1.57	10	Mar.	14.6	64	Aaa
5	O	Citizens Utilities	18	.48a	5.7a	1.02	11	Mar.	17.6	47	Ba
91	S	Cleveland Elec. Illum.	62	2.60	4.2	4.10	15	Mar.	15.1	63	Aaa
3	O	Colorado Cent. Power	24	1.20	5.0	1.53	10	Mar.	15.7	78	—
32	S	Columbus & S. O. E.	31	1.60	5.2	2.10	6	Mar.	14.7	76	A
329	S	Commonwealth Edison	42	1.80c	4.3	2.28	8	Mar.	18.4	79	Aaa
10	A	Community Pub. Service	22	1.00#	4.6	1.56	5	Mar.	14.1	64	—
1	O	Concord Electric	36	2.40	6.7	2.48	31	Dec.	14.5	97	—
55	O	Connecticut L. & P.	17	.94	5.7	1.20	24	May	14.2	78	Aaa

1953 Rev. (Mill.)		(Continued)	7/14/54 Price About	Div. Rate	Current Yield	Share Earnings* Cur. Period	% Increase	12 Mos. Ended	Price-Earns. Ratio	Dividend Pay-out	Moody Bond Rating
18	O	Connecticut Power	46	2.25	5.6	2.31	D4	Mar.	17.3	97	Aaa
454	S	Consol. Edison	46	2.40	5.2	2.89	3	Mar.	15.9	83	Aa
98	S	Consol. Gas of Balt.	30	1.40	4.7	1.64	D6	Mar.	18.3	85	Aaa
158	S	Consumers Power	46	2.20	4.8	2.99	20	May	15.4	74	Aa
57	S	Dayton P. & L.	41	2.00	4.9	2.88	9	Mar.	14.2	69	Aa
28	S	Delaware P. & L.	30	1.40	4.7	1.96	22	May	15.3	72	Aa
192	S	Detroit Edison	33	1.60	4.9	1.92	1	May	17.2	83	Aa
107	A	Duke Power	47	1.85	4.0	3.18	21	Mar.	14.8	58	Aaa
82	S	Duquesne Light	33	1.72	5.2	2.23	1	Mar.	14.8	77	Aaa
27	O	Eastern Util. Assoc.	31	2.00	6.5	2.39	D8	May	13.0	84	—
2	O	Edison Sault Elec.	11	.50	4.5	.89	53	Mar.	12.4	56	—
9	O	El Paso Electric	32	1.60	5.0	2.13	17	May	15.0	75	A
10	S	Empire Dist. Elec.	26	1.40	5.4	2.12	1	Mar.	12.3	66	Baa
4	O	Fitchburg G. & E.	51	3.00	5.9	2.80	D7	Dec.	18.2	107	—
32	S	Florida Power Corp.	36	1.50	4.2	2.02	21	Mar.	17.8	74	A
70	S	Florida P. & L.	48	1.80	3.8	3.34	NC	Apr.	14.4	54	A
156	S	General Pub. Util.	32	1.70	5.3	2.37	21	Mar.	13.5	72	—
5	O	Green Mt. Power	27	1.50	5.6	1.75	4	Mar.	15.4	86	Ba
43	S	Gulf States Util.	32	1.40	4.4	1.91	23	May	16.7	73	Aa
21	A	Hartford E. L.	56	2.75	4.9	3.37	42	Mar.	16.6	82	Aaa
5	O	Haverhill Elec.	44	2.50†	5.7	2.99	10	Dec.	14.7	84	—
53	S	Houston L. & P.	36	1.20	3.3	2.01	16	May	17.9	60	Aa
7	O	Housatonic P. S.	24	1.40	5.8	1.47	11	Dec.	16.3	95	—
22	S	Idaho Power	50	2.20	4.4	3.36	17	Mar.	14.9	65	Aa
62	S	Illinois Power	48	2.20	4.6	2.70	D4	May	17.8	82	A
35	S	Indianapolis P. & L.	23	1.10	4.8	1.60	6	Mar.	14.4	69	A
17	S	Interstate Power	12	.70	5.8	.93	4	Mar.	12.9	75	A
23	O	Iowa Elec. L. & P.	22	1.20	5.5	1.63	4	May	13.5	74	—
28	S	Iowa-Ill. G. & E.	33	1.80	5.5	2.08	D14	May	15.9	87	Aa
29	S	Iowa Power & Light	27	1.40	5.2	1.91	5	Mar.	14.1	73	Aa
25	O	Iowa Pub. Service	26	1.40	5.4	1.94	16	May	13.4	72	A
11	O	Iowa Southern Util.	22	1.20	5.5	1.51	2	Apr.	14.6	79	Baa
46	S	Kansas City P. & L.	38	1.80	4.7	2.11	3	May	18.0	85	Aaa
22	O	Kansas Gas & Elec.	43	2.00	4.7	3.52	17	May	12.2	57	A
34	S	Kansas Pr. & Lt.	22	1.12	5.1	1.38	D2	Apr.	15.9	81	Aa
31	O	Kentucky Utilities	25	1.12	4.5	1.88	NC	Apr.	13.3	60	A
6	O	Lake Superior D. P.	34	2.00	5.9	2.83	10	Mar.	12.0	71	A
5	O	Lawrence Electric	28	1.40†	5.0	1.87	18	Dec.	15.0	75	Aa
67	S	Long Island Lighting	21	1.00	4.8	1.23	NC	May	17.1	81	A
39	S	Louisville G. & E.	46	1.80	3.9	3.41	12	Mar.	13.5	53	Aa
7	O	Lowell Elec. Lt.	56	3.50†	6.3	3.74	3	Dec.	15.0	94	—
8	O	Lynn G. & E.	31	1.60	5.2	2.14	14	Dec.	14.5	75	Aa
7	O	Madison G. & E.	38	1.60	4.2	3.13	16	Dec.	12.2	51	Aa
3	A	Maine Public Service	24	1.40	5.8	1.72	6	May	13.9	81	Baa
5	O	Michigan G. & E.	37	1.35#	6.6a	2.79	D7	Mar.	13.3	48	Baa
127	S	Middle South Util.	32	1.40	4.4	1.98	13	May	16.1	71	—
20	S	Minnesota P. & L.	24	1.20	5.0	1.87	5	May	12.8	64	A
2	O	Miss. Valley P. S.	24	1.40	5.8	2.16	1	May	11.1	65	—
9	A	Missouri P. S.	35	1.80	5.1	2.37	13	Dec.	14.8	76	—
5	O	Missouri Utilities	22	1.00	4.6	1.74	6	Mar.	12.6	57	—
31	S	Montana Power	36	1.60	4.4	2.62	D6	May	13.7	61	Aa
118	S	New England Elec.	15	.90	6.0	1.23**	D1	Apr.	12.2	73	Baa
38	O	New England G. & E.	17	1.00	5.9	1.34**	D6	May	12.7	75	Baa
41	O	New Orleans P. S.	45	2.25	5.0	2.97	5	May	15.1	77	A
2	O	Newport Electric	37	2.00	5.4	2.64	D17	May	14.0	76	—
68	S	N. Y. State E. & G.	40	2.00	5.0	2.68	19	May	14.9	75	A
204	S	Niagara Mohawk Power	31	1.60	5.2	2.07	11	Apr.	15.0	77	Aa
63	O	Northern Ind. P. S.	30	1.60	5.3	2.26	4	May	13.3	71	A
110	S	Northern States Pr.	15	.80	5.3	1.03	6	May	14.6	78	Aa
8	O	Northwestern P. S.	15	.90	6.0	1.23	D12	Mar.	12.2	73	A
109	S	Ohio Edison	44	2.20	5.0	2.90	1	May	15.2	76	Aa
35	S	Oklahoma G. & E.	30	1.50	5.0	1.81	D5	May	16.6	83	A
14	O	Otter Tail Power	27	1.50	5.6	2.11	D7	May	12.8	71	—
364	S	Pacific G. & E.	44	2.20	5.0	3.12**	24	Dec.	14.1	71	Aa
22	O	Pacific P. & L.	23	1.20	5.2	1.65	D10	Mar.	13.9	73	Baa

1953 Rev. (Mill.)		(Continued)	7/14/54 Price About	Div. Rate	Current Yield	Share Earnings* Cur. Period	% Increase	12 Mos. Ended	Price-Earns. Ratio	Dividend Payout	Moody Bond Rating
106	S	Penn Power & Light	43	2.40	5.6	2.79	25	May	15.4	86	A
8	A	Penn. Water & Power	40	2.00	5.0	2.13	D8	Dec.	18.7	94	A
187	S	Philadelphia Elec.	37	1.80	4.9	2.41	7	Apr.	15.3	75	Aaa
27	O	Portland Gen. Elec.	20	1.00	5.0	1.33	9	May	15.0	75	Baa
50	S	Potomac Elec. Power	19	1.00	5.3	1.16	3	Mar.	16.4	86	Aa
56	S	Pub. Serv. of Colo.	39	1.60	4.1	2.33	3	Mar.	16.7	69	Aa
230	S	Pub. Serv. E. & G.	28	1.60	5.7	1.75	2	Mar.	16.0	91	Aa
59	S	Public Serv. of Ind.	39	2.00	5.1	2.33	4	May	16.7	86	Aa
21	O	Public Serv. of N. H.	16	.90	5.6	.94	D10	May	17.0	96	A
8	O	Public Serv. of N. M.	13	.68	5.2	.73	D12	Mar.	17.8	93	—
20	O	Puget Sound P. & L.	31	1.64	5.3	1.89	21	May	16.4	87	Baa
46	S	Rochester G. & E.	45	2.24	5.0	3.31	9	Mar.	13.6	68	A
12	O	Rockland L. & P.	17	.60	3.5	.68	D4	Dec.	25.0	88	A
7	S	St. Joseph L. & P.	22	1.20	5.5	1.73	15	Mar.	12.7	69	A
36	S	San Diego G. & E.	16	.80	5.2	1.30	18	May	12.3	62	Aa
7	O	Sierra Pacific Pr.	35	2.00	5.7	2.46	D14	May	14.2	81	Baa
140	S	So. Calif. Edison	45	2.00	4.4	2.42	D6	Mar.	18.6	83	Aa
29	S	So. Carolina E. & G.	17	.80	4.7	1.23	58	May	13.8	65	Baa
5	O	Southern Colo. Pr.	14¼	.70	4.8	1.22	25	Feb.	11.9	57	—
180	S	Southern Company	18	.80	4.5	1.22	6	May	14.7	66	—
13	S	So. Indiana G. & E.	27	1.50	5.6	2.01	14	May	13.4	75	Aa
3	O	So. Nevada Power	14	.80	5.7	1.39	NC	Mar.	10.1	58	—
1	O	Southern Utah Power	14½	1.00	6.9	1.02	D35	May	14.2	98	—
3	O	Southwestern E. S.	18	1.00	5.6	1.52	8	May	11.8	66	—
31	O	Southwestern P. S.	27	1.32	4.9	1.67	19	Apr.	16.2	79	A
17	A	Tampa Electric	61	2.80	4.6	3.69	5	May	16.5	76	Aa
109	S	Texas Utilities	57	2.08	3.7	3.37	13	May	16.9	62	Aa
34	S	Toledo Edison	14	.70	5.0	.92	D1	Mar.	15.2	76	A
10	O	Tucson G. E. L. & P.	20	.92	4.6	1.41	7	Mar.	14.2	65	—
103	S	Union Elec. of Mo.	26	1.20	4.6	1.42	14	Mar.	18.3	85	Aa
27	O	United Illuminating	49	2.40†	4.9	2.89	6	Dec.	16.9	83	—
2	O	Upper Peninsula Pr.	21	1.20	5.7	1.58	34	Mar.	13.3	76	Baa
30	S	Utah Power & Light	39	2.00	5.1	2.44	2	May	16.0	82	A
84	S	Virginia E. & P.	32	1.40	4.4	1.96	20	May	16.3	71	Aa
22	S	Washington Water Pr.	31	1.60	5.2	1.82	6	May	17.0	88	A
115	S	West Penn Elec.	41	2.20	5.4	3.47	5	May	11.8	63	—
62	O	West Penn Power	46	2.10†	4.6	2.65	8	Mar.	17.3	79	Aa
9	O	Western Lt. & Tel.	28	1.60	5.7	2.40	12	Mar.	11.7	67	A
22	O	Western Mass. Cos.	38	2.00	5.3	2.71	12	May	14.0	74	—
84	S	Wisconsin Elec. Pr.	32	1.50	4.7	2.03	—	Mar.	15.8	74	Aa
32	O	Wisconsin P. & L.	25	1.20	4.8	1.75	19	Mar.	14.3	69	A
30	S	Wisconsin Pub. Ser.	20	1.10	5.5	1.41	8	Apr.	14.2	78	A
		Averages			5.1%				14.9	75%	
		Foreign Companies††									
$219	S	American & Foreign Pr.	10½	$ .60	5.7%	$2.28	2%	Mar.	4.6	26%	—
116	A	Brazilian Trac. L. & P.	8	1.00	12.5	1.40	D53	Dec.	5.7	71	—
56	A	British Columbia Pr.	23	1.00	4.4	1.47	15	Dec.	15.6	68	—
15	A	Gatineau Power	25	1.20	4.8	1.77	10	Dec.	14.1	68	Baa
31	O	Mexican L. & P.	6	—	—	—	—	—	—	—	—
9	A	Quebec Power	26	1.20	4.6	1.57	23	Dec.	15.1	76	Baa
42	A	Shawinigan Water & Pr.	52	1.45	2.8	2.26	17	Dec.	23.0	64	Baa

B—Boston Exchange. A—American Stock Exchange. O—Over-counter or out-of-town exchange. S—New York Stock Exchange. D—Decrease. NC—No comparable figures available. *If additional common shares have been recently offered, earnings are adjusted to give effect to the offering. Percentage change is in the net income available for common stock. Tax savings resulting from accelerated amortization of defense facilities are excluded (when separately reported). **Based on average number of shares. a—Also regular annual 3 per cent stock dividend, which is included in the yield. b—Also 5 per cent stock dividend. c—Also 1/25 share of Northern Illinois Gas for each share of Commonwealth Edison. #—Also occasional stock dividends. †Estimated (rate irregular or includes extras). ††With exception of American & Foreign Power, these stocks are listed in Canada, and the Canadian prices are here used. (Curb prices are affected by exchange rates, etc.)



What Others Think

AEC Contract Stirs Debate on TVA

EVERY so often Congress is presented with an opportunity to debate once again the relative merits of the Tennessee Valley Authority and the philosophy it represents. Such an opportunity arose last month when the bill amending the Atomic Energy Act of 1946 came up for floor action in both chambers of Congress. Public power proponents, all set to oppose those features of the bill which would open atomic energy development to private enterprise, leveled most of their fire at an administration-approved contract between the Atomic Energy Commission and a private utility group which they claimed was the opening wedge in an attempt to destroy TVA.

The contract was clearly designed to avoid the necessity of appropriating some $100,000,000 for TVA construction of a steam plant at Fulton, Tennessee, to supply 600,000 kilowatts to the AEC's Paducah, Kentucky, plant. Instead, the contract would provide for construction of a steam plant in West Memphis, Arkansas, by a private utility group, known as Dixon-Yates, which would supply TVA customers in the Memphis area with the exact amount of power to be earmarked by TVA for the atomic energy plant at Paducah. There was much discussion in Congress about the legality of such a contract and a good deal of criticism of some of its unusual tax provisions. But it was obvious from the debate that the public power bloc was most disturbed over the notion, clearly implied by the contract, that there should be a limit to TVA expansion.

THE most forthright statement on this point came from Representative Phillips (Republican, California), who heads a House Appropriations subcommittee which handles requests for funds from both TVA and AEC. The objections made to the contract all had a familiar ring, Phillips told the House, bearing a striking similarity to "the protests of a calf when the time has come for it to be weaned." Naturally the TVA would like to "continue its carefree life, without the responsibilities and worries which face every private enterprise . . . which must raise its own money, live upon its income, set aside its own reserves, pay taxes to federal, state, and local governments, plan its own future with some thought to its probable income, make a profit for those who have been optimistic enough to invest in it, and in every way conduct itself as a normal business operation. This the TVA has never done, and this the TVA, like the familiar calf, will not do without echoing the calf's protests."

Phillips noted that Congress has expressed four times in this session and the last its opposition to the idea that TVA shall spread westward, or in any other

direction, outside of the area designated as its limitations in the basic act, and particularly that this expansion, not contemplated in that act, and perhaps illegal, should be by the process of building steam plants to produce additional power. "It should be obvious that if the TVA has the legal right to build a steam plant at Fulton, where it proposed to build the plant for the additional power the government now hopes to get from private enterprise, and to carry the current to Memphis, which is 115 miles west of the Tennessee river, then there is no limitation upon its area of construction nor of service," Phillips stated.

TVA has no inherent right, as claimed by its supporters, to supply all power, from the Atlantic seaboard to the Mississippi, or even in the territory defined in the basic act, Phillips declared. What TVA does have, he continued, is a monopoly created for its own benefit, partly by Congress and partly because of war demands. Referring to the charge that the Dixon-Yates proposal constitutes a monopoly, Phillips said TVA should be investigated on the same grounds. "The TVA is permitted, under the law, to require contracts from its customers that they will not purchase power from any other power producer," Phillips noted. "If this is not a monopoly, I never saw one, but the contracts are even more monopolistic than that; they provide that the power may only be resold by communities at rates approved by the TVA itself. I know of no comparable situation in the United States."

Phillips brushed off as a "fairy tale" the often heard argument that TVA repays its investment to the federal government. "The TVA does not repay its investment, and makes no pretense of paying its investment," he stated flatly. The theory used by TVA supporters to explain this point is that the money advanced by the taxpayers of the other states and poured into the Tennessee valley area is used to build power plants, transmission lines, dams, and other facilities for the production of power, which are said to "belong to the government." The theory ignores the fact that power plants wear out or become obsolete, Phillips said. "In a generation moving into atomic power and new methods of production and use and distribution, I am afraid the government will have very little value left in its power plants and distribution systems in the Tennessee valley after forty or fifty years," Phillips stated. "Even under the TVA theory, the power construction, after fifty years, will still serve that local area, not the taxpayers of other states, to whom the TVA says the plants belong."

THE California Congressman noted that every year TVA comes back to Congress for deficit money running as high as several hundred million dollars a year. For fiscal 1954, Congress appropriated $188,546,000; in 1953 the figure was $336,027,000. In those two years, said Phillips, TVA has paid back, respectively, $24,676,977 and $19,229,268.

Phillips denied that there is any plan on foot to destroy TVA. He did say, however, that there has been some discussion over whether or not TVA should be set up as a government corporation, to operate on its own money, issue its own bonds if necessary, and in every way maintain itself as a private utility would be expected to maintain itself. This proposal has never formally come before the subcommittee Phillips heads, or any other committee. But, concluded Phillips, "if the TVA is as successful an operation as its friends maintain, then it should have no concern over such a proposal. It has a monopoly area. I have no reason to doubt that it can operate economically and efficiently. Certainly it should not expect indefinitely to operate at

the expense of the taxpayers of the other states."

Phillips said the time has come to treat the TVA situation in an intelligent and reasonable way. He expressed his belief that the Dixon-Yates plan will be approved by the people of Tennessee if it is properly presented to them as a plan not to destroy the TVA, but to stop deficit financing and the trend toward paternalistic government.

Notes on Recent Publications

THE views generally held about the industrial revolution and the rise of the factory system in the nineteenth century represent a highly distorted account of the social consequences of that system. So state the distinguished economic historians whose papers make up a newly published book, *Capitalism and the Historians.* The book opens with an introduction by F. A. Hayek, author of *The Road to Serfdom,* which lays the groundwork for the study and suggests why historians have been so hard on Capitalism and the factory system. Papers by other authors show how this distorted picture still prevails, what the actual conditions and facts were, why the intellectuals have usually been antagonistic to Capitalism, and what effect these historical misconceptions have had on the world's attitude toward business enterprise.

Actual studies of the English factory system and the English worker buttress the conclusion of the authors—that under Capitalism the workers, despite long hours and other hardships of factory life, were better off financially, had more opportunities, and led a better life than had been the case before the industrial revolution. The authors of *Capitalism and the Historians* believe these facts are now generally recognized by competent economic historians. They feel it is time they were commonly known to the general public, whose notion of the effects of the factory system is still based upon earlier work which has proved to be largely erroneous.

The distinguished contributors to the book include F. A. Hayek, professor of social and moral science in the committee on social thought at the University of Chicago; T. S. Ashton, professor of economic history in the University of London; Louis Hacker, dean of the school of general studies, Columbia University; W. H. Hutt, professor of commerce in the University of Capetown; and Bertrand De Jouvenel, French publicist and economic historian.

CAPITALISM AND THE HISTORIANS, edited by F. A. Hayek. The University of Chicago Press, Chicago, Illinois. 1954. Price, $3.

CAN sea water be desalted in quantities sufficient to meet the mounting needs of large modern cities? To meet the requirements of large irrigation projects? What would it cost? A new book, *Fresh Water from the Ocean,* investigates the prospects for salt-water conversion in projected capacities of 1,000 million gallons every twenty-four hours—approximately the daily consumption of New York city. Sponsored by the Conservation Foundation, the book provides a sound basis for weighing the practicality of present and proposed conversion methods in large-scale operation, at a cost that can be met by cities, industries, and farming areas in need of water.

The various conversion methods are described and their economic feasibility analyzed with respect to plant construction, labor cost, maintenance, raw materials, and power. Addressed not only to scientists but to everyone concerned with future water supply, the book is not written in highly technical language. Yet at no point is scientific precision sacrificed. Cecil B. Ellis, author of the book, has taught both at the University of Michigan and the College of the City of New York. He has also been a research physicist with the General Electric Company and the Kellex Corporation. At present he is head of Walter Kidde Nuclear Laboratories, Inc.

FRESH WATER FROM THE OCEAN, by Cecil B. Ellis. The Ronald Press Company, New York, New York. 1954. Price, $5.

The March of Events

Reaction to FPC Order

SENATOR Homer Ferguson (Republican, Michigan), who has been urging the Federal Power Commission to freeze rates, said he was pleased with its recent action temporarily freezing wholesale natural gas prices at the June 7th level, the date of the Supreme Court's decision in the Phillips Petroleum Company Case. The Senator said FPC's action "will have real meaning to Michigan consumers of natural gas in preventing rate increases."

Senator Johnson (Democrat, Texas) called for a delay or change in what he said was the FPC's "hasty and ill-advised" order. But Senator Burke (Democrat, Ohio) hailed the directive as "a major victory for the consumers."

The conflicting comments set the tone for Capitol Hill reaction on the issue. There was a split, with scant regard for party lines, between legislators whose states mainly produce natural gas and those which consume it.

Senator Kerr (Democrat, Oklahoma) declared the order points up the need of "corrective legislation" to remove the industry from FPC control, but conceded there was little chance such legislation could be passed in the waning days of this session of Congress.

Commissioner Seaborn L. Digby (Louisiana Democrat) dissented from the commission's order, claiming the FPC had "exceeded its rule-making authority."

Governor Allan Shivers of Texas declared that Congress must correct the situation that allowed the FPC action. He said it was a further attempt by the Supreme Court and the FPC "to invade state control."

Senator Humphrey (Democrat, Minnesota) said any new bill to remove the federal agency's power to regulate rates will be "opposed vigorously."

Alabama

Uniform Rate to Start

A NEW uniform rate schedule will be put into effect beginning August 10th by Alabama Gas Corporation, in compliance with an order of the state public service commission.

Under the present schedules, the firm charges varying rates in different cities.

The order grew out of a petition to the commission by the corporation for an increase in rates amounting to $882,130 a year. The commission turned down this request on July 1st.

Only minor changes in bills rendered to local consumers are expected.

Illinois

Increased Rates Granted

THE state commerce commission last month granted Illinois Power Company a $5,398,000 annual increase in its rates for electricity, gas, and steam heat. The boost was $1,882,000 less than the utility sought. The commission authorized the firm to hike its rates immediately.

Affected were 310,000 electric customers in 447 towns, 155,000 gas users in 53 towns, and 1,600 steam-heating customers in Decatur, Danville, Bloomington, Galesburg, Champaign, and Urbana.

The commission said its order would mean a 50-cent annual increase for the average customer who uses gas for cooking and water heating, and $16 a year more for residential space-heating customers. The annual gas increase was estimated at $647,000.

Kentucky

City Drops Protest in Rate Controversy

A MOTION to dismiss its suit challenging refunds and new rates ordered by the state public service commission in the Union Light, Heat & Power Company rate case was filed in Franklin county circuit court last month by the city of Newport in a move expected to clear the way for settlement of the complicated rate controversy.

Under the commission's order, Union will get about $796,000 a year more gross income than it was receiving when the rate dispute started in 1952. The utility, however, will refund to its gas and electric customers in northern Kentucky about $2,500,000 under the April 22nd order.

The refund stemmed from a difference in rates Union had been charging under bond and those authorized by the state commission. An additional $250,000 is expected to be refunded by the utility as a result of a recent Federal Power Commission ruling. The FPC ordered Union's wholesaler to make rate reductions.

North Carolina

Pipeline Construction Planned

THE Tidewater Gas Company and its subsidiary, Fayetteville Gas Company, last month filed an application with the state utilities commission for authority to pipe natural gas to Fayetteville, Fort Bragg, Sanford, Asheboro, and Siler City.

Tidewater Gas recently took over gas systems Carolina Power & Light Company acquired when it absorbed the old Tide Water Power Company.

North Dakota

Co-operatives' Complaints Dismissed

COMPLAINTS by two rural electric co-operatives that private utilities were infringing on their territory were dismissed last month by the state public service commission.

The complaints had been made by the

Nodak Rural Electric Co-operative, Inc., of Grand Forks against Northern States Power Company, and the Williams Electric Co-operative, Inc., of Williston, against Montana-Dakota Utilities.

Dismissal of the complaints was ordered by 2-to-1 decisions of the commission in each case. The majority opinions were concurred in by Commissioners Elmer Cart and E. H. Brant. A dissenting opinion was entered in both cases by Commissioner Ernest Nelson.

Ohio

Telephone Service Standards Drafted

THE state utilities commission has scheduled a public hearing for August 2nd on its proposed minimum telephone service standards which, it says, would affect all of the 175 telephone companies operating in the state.

Although the hearing was called to give the companies a chance to suggest revisions or modifications, indications were that the proposed standards would be approved by the telephone industry. The recommendations were drafted after numerous conferences between industry representatives and commission staff members.

The proposed standards deal with such problems as adequate facilities for both local and long-distance service, delayed calls, maintenance and repair, improved transmission, trouble reports, and service interruptions.

Some of the proposed standards would become effective next July 1st, the others a year later.

Pennsylvania

Rate Hearings Postponed

THE state public utility commission recently postponed for two weeks until August 16th, 17th, and 18th the opening round of hearings in Mercer on an estimated $1,792,000 annual rate increase proposed by the United Natural Gas Company of Oil City.

The hearings had been scheduled at the same place July 29th and 30th, but conflicting engagements of attorneys in the case compelled the delay, the commission said. An extra hearing day was slated to help speed the case.

Originally filed to become effective last May 31st, the increase was suspended by the commission for six months to next November 30th, pending an investigation to determine whether it is justified.

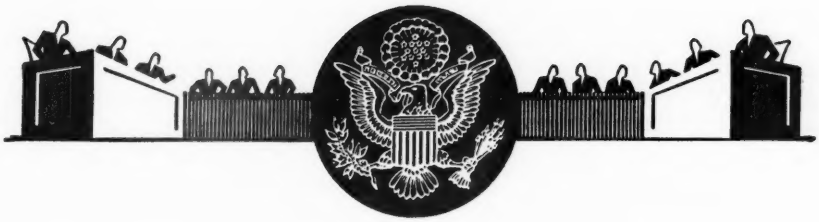
Gas Rates to Be Cut

GAS consumers in the central Pennsylvania area will save an estimated $204,500 annually through a new rate reduction plan announced recently by the Harrisburg division of the United Gas Improvement Company.

Under a new tariff filed with the state public utility commission, the reductions are to become effective the first full month after October 15th. Harrisburg, Lebanon, Carlisle, Elizabethtown, and neighboring boroughs and townships will participate in the cut, it was explained.

It was emphasized that the lowering of the rate was voluntary.

Only consumers who pay a minimum bill, because of low consumption, will not share in the reduction.



Progress of Regulation

Service Extension in Franchise Area Need Not Produce Immediate Profit

THE appellate division of the New Jersey superior court reversed and remanded to the board an order relieving a water and sewerage utility from extending sewer facilities unless certain conditions imposed by the utility relating to the financing of the extension are met. The extension was needed for service to fifty-eight low-cost homes recently constructed in an area covered by the company's franchise. The company was rendering water service to these homes.

The state law requires that an extension be made if it is reasonable and practicable, the financial condition of the company would reasonably warrant the original expenditure, and the installation would furnish sufficient business to justify its construction and maintenance at the company's expense. The board had found that the first two requirements were met but that the "sufficient business" requirement was not met.

The evidence showed an operating loss on sewer service for the past two years and the estimated annual receipts from the fifty-eight home owners were said to be inadequate. The court based its decision on the fact that the company had the exclusive franchise for both sewer and water facilities and operated the two departments with common employees. Apparently, the water department produced enough income to overcome an operating loss in the sewer department. The court said:

> The fact that a utility will not realize a profit or an immediate profit through a specific addition to or extension of its facilities, which serves the public necessity and convenience, is not dispositive of the matter. The criterion is the overall return in an operation such as that of respondent. The holder of an exclusive franchise to supply important and essential public needs in a limited area cannot pick and choose its customers solely from the standpoint of pecuniary advantage and ignore those who may be said to constitute an integral part of the locality served, simply because, considered in isolation, their service will not produce a profit.

Sufficient Business

The company contended that "sufficient business" means that new construction should show an immediate profit. The board seemed to have adopted this view. The court said that if the legislature had intended profit to be a condition precedent to an order for expansion of facilities, the

addition or substitution of a few words would have produced that result. So it might be assumed that the term "sufficient business" was deliberately and advisedly used in order to avoid making profit the criterion.

Remand to Board

The issue of the effect of the absorption of the cost of the extension upon the over-all return was neither explored to any extent by the parties nor determined by the board. The company president said that the result would be to reduce the low rate of return the company was experiencing, but the matter was not pursued further. Under the circumstances, the court said, justification did not exist for a direction that the extension should be installed in accordance with the application. Consequently, there must be a remand of the proceeding to the board for hearing and determination of this issue. The court concluded:

> If, upon such hearing, it appears that absorption of the cost of the extension by respondent will not reduce the over-all earnings below the level of a fair and reasonable return, the extension should be ordered. If, however, it appears that the effect would be to reduce the return below the stated level, then revision of the rates should be made to accommodate the extension, unless such revision would force an unreasonable burden upon all of the consumers. If there is a specific finding of such unreasonable burden, then the board should prescribe the reasonable terms upon which the making of the extension will be ordered.

Lakewood Township v. Lakewood Water Co. 102 A2d 671.

The court later denied applications for reargument, stating that its action in remanding the proceeding to the board, because justification did not exist for a direction that the extension be made according to the township's application, did not constitute an intrusion upon the jurisdictional field of the board. *Lakewood Township v. Lakewood Water Co. 103 A2d 387.*

The board later decided that no further order was necessary since, following the remand, the company had notified the board that it had determined not to petition the supreme court for review and that the company would at its own expense extend sewerage facilities. *Lakewood Township v. Lakewood Water Co. Docket No. 7351, March 17, 1954.*

Natural Gas Rates Increased to Cover Higher Supply Cost

THE New Mexico commission authorized a natural gas company to increase rates to cover the increased cost of purchased gas. The old rates would produce a loss out of operations in view of the increased cost of gas. The higher rates were calculated to yield a return of 6.3 per cent.

The commission was not unmindful of the fact that the company, in seeking a rate increase, presented data tied to a 6 per cent rate of return, but it concluded that a definite hardship would or could ensue if it viewed the company's case for revenue needs tied to a 6 per cent rate of return. It said:

> It is axiomatic in all cases that the ultimate test is the sufficiency of net operating income, all factors considered, and that an indicated rate of return is but one of the measuring rods for de-

termining the adequacy of net operating income.

In recent cases this commission has found that an indicated rate of return of 6.3 per cent appeared to be reasonable and proper in the case of both a natural gas utility and an electric utility under the circumstances in the respective cases. The commission is not mindful of any extraordinary change in our economy to make it believe that a lesser rate of return should be indicated for this natural gas distributing company under all the facts and circumstances of this case.

Representatives of a municipality served by the company indicated to the commission a recognition of the legitimacy of the company's request for a rate increase. The commission said that while such concurrence in proposed increases cannot be the controlling factor in its determinations, great weight should be given to the recommendation. *Re Pioneer Nat. Gas Co. Case No. 416, June 8, 1954.*

Electric Service Extension to Summer Colony Refused

THE Connecticut commission refused to require an electric company to extend service to a sparsely settled summer season island colony. The difficulties surrounding the extension of service to this particular island, the small amount of revenue which could be expected, the high cost of installation of the special equipment necessary to reach the island together with high maintenance costs would, in the commission's opinion, place an unreasonable burden on the balance of the company's customers.

Extension Statute

The residents seeking service relied on a statute requiring the extension of electric service to unserved areas having a density of two or more customers per mile at a guaranty of not more than $13.50 per mile per month. The commission held that this statute must be strictly construed since it has, in effect, made an exception as a matter of public policy permitting utilities to spread the expenses and revenues involved in serving such customers among the balance of their systems.

The commission said that the right which all utility customers have to be protected against discrimination is both a common law and a statutory right. It opined that its obligation to avoid discrimination is at least as great as, or greater than, its obligation to order service extensions under that statute. The commission concluded that the facts surrounding this application made it clear that an order requiring extension of electric service to the island could be made only after a liberal interpretation of that statute.

It did not believe that the statute was intended to obligate a public utility company unconditionally, without exception, to take such unusual and costly steps as submarine or aerial construction and maintenance to serve an isolated spit of land separated from the mainland by water or marsh land, and occupied only a few months each year as a vacation area, under the same terms and conditions as service is extended to customers located in more ordinary circumstances. All of its decisions, the commission said, are based on reasonableness and public convenience and necessity.

The commission concluded that the "proper interpretation and administration of the provisions of the act, as do all other

statutes subject to its jurisdiction, require the exercise of reason and common sense, and prohibit a blind and unreasoning interpretation which would disregard the consequences which would flow therefrom."

The applicants claimed that the statute required the company to serve the island regardless of the cost because there would be more than two customers to the mile of line. In rejecting this claim, the commission said:

> While a literal and legalistic construction might agree with applicants' contention, we do not believe any statute (particularly a statute which derogates from a common law or statutory right) should be construed in an intellectual vacuum with all common sense pumped out of the atmosphere. The letter of the law is not, in all cases, a correct guide to the true sense of the lawmaker. Kelley *v.* Killourey, 81 Conn 320, at 321. Neither will an unreasonable requirement be inferred where none is expressed, Tolli *v.* Connecticut Quarries Co. 101 Conn 109, at 117. An interpretation which leads to an absurdity should always be avoided. And absurd it would be to hold that there is no room for reason in determining whether the customers of this company should be called upon to support this heavy burden. For, if it is right and just under the statute, to extend service to Cedar Island, we must order similar extensions to any other isolated island at similar terms—regardless of cost, or distance, or usage, provided the density of population results in two or more customers per mile of extension, and, provided the island is within the company's charter territory. We cannot bring ourselves to believe that such is the clear meaning of this statute.

Cedar Island Improv. Asso. v. Clinton E. L. & Power Co. Docket No. 8925, July 2, 1954.

Co-operative's Customer May Switch to Electric Company

A CUSTOMER receiving electric service from a nonprofit co-operative has the legal right to demand service from an electric company having authority to serve the geographical area in which he resides, according to the Ohio commission. This was decided when an individual, dissatisfied with the service being rendered by an electric co-operative, successfully applied to the commission for an order requiring an electric company to serve him.

The statutory definition of a public utility expressly excludes public utilities not operating for profit. The manager of the co-operative testified that it was a public utility not for profit, that it was incorporated under the Non-Profits Act of the state of Ohio, and that it did not have a schedule of rates filed with the commission.

In view of this testimony, the commission concluded that the co-operative was not a public utility over which it had jurisdiction. It pointed out that its powers are conferred by statute, and that it possesses no authority other than that expressly vested in it. For this reason, it could not order the co-operative to render electric service or improve service being rendered.

Since the commission could not require the co-operative to improve its service to the individual, he was placed, as far as the commission was concerned, in the same

position as any person receiving no electric service. It was admitted that the electric company served in the geographical area in which the applicant's residence was located and that it had tariffs on file with the commission. *Re Nafe (Underwood Corp.) Case No. 23,924, September 28, 1953.*

Quarterly Meter Reading and Billing Not Discriminatory

An electric company proposed changing to a quarterly meter reading and billing basis for those residential and small commercial customers who did not require measurement of demand. Complaints were lodged with the Pennsylvania commission that such a change was discriminatory and unreasonable.

The commission noted that the proposal had been prompted by order of a federal commission requiring the termination of a joint meter reading operation with a former affiliate. For the company to continue the monthly reading and billing program on its own would involve a substantial increase in annual operating expenses. The quarterly basis was designed to avoid this increase.

The commission was of the opinion that the company's proposal should be allowed, and that it was not discriminatory or unreasonable. If the company was required to continue monthly reading and billing on its own, the increase in operating expenses would contribute to a higher level of rates.

Claims that the quarterly billing imposed a hardship on customers who budgeted expenditures, seemed to the commission to be more theoretical than real. Even with the change, the commission commented, the customers could continue to make monthly payments based upon average use, which for the majority of small residential and commercial services remained fairly constant. *City of Pittsburgh v. Duquesne Light Co. Complaint Docket No. 15899, May 24, 1954.*

Transit Company Granted Rate Increase

The Pennsylvania commission, in approving a transit company's application for authority to increase rates, considered a return of 6.3 per cent reasonable.

This return was based on original cost, the lowest of three rate bases submitted by the company.

The commission gave due consideration to the company's estimates of reproduction cost, even though the life of the company's property was relatively short and subject to rapid obsolescence.

Wage increases which would become operative in three months were included in the company's projected operating expenses. The commission thought this was fair since wages represented approximately 65 per cent of the company's total operating expenses.

With respect to depreciation, the company claimed its busses should be given an 8-year life basis. But the commission noted that such a basis would bear little relation to the company's actual replacement practices. A 10-year life was considered more reasonable. *Yosko v. Lehigh Valley Transit Company et al. Complaint Docket Nos. 15745, 15967, 15972, April 12, 1954.*

Lawn-sprinkling Dispute Won by Customer but New Restrictions Adopted

A DISPUTE between a customer and a water company involving a lawn-sprinkling system was resolved in favor of the customer by the New York commission. The customer desired a 1½-inch service pipe from the main to the proposed sprinkling system. The company believed that a one-inch pipe would be sufficient and that the larger pipe might result in a waste of water.

The customer's witnesses testified as to the use of electric time clocks to shut off the water after a proper period and that a given sprinkler head in a properly designed system would use the same amount of water regardless as to whether a one-inch or 1½-inch service connection were used. Company witnesses described the company's system, the need for conservation of water, the effect of unlimited sprinkling on the system, and made the following suggestions as to restrictions on water sprinkling:

> Service size should be restricted to one inch except where high ground, long length of service, extremely large plots, or special conditions make larger sizes proper.
>
> All sprinkler systems should be controlled with a sealed time-clock set to prevent use more often than once in four days and to prevent the use of more than one-half inch of water per watering.
>
> Installation of pressure-reducing valves on every large service so as to restrict the pressure available at the sprinkler head to approximately 35 pounds.
>
> Limit the use of underground automatic sprinkler systems to the hours between twelve midnight and 6 A.M.; hand-held hoses to be permitted at any time; the "whirligig" type of portable sprinkler to be used only between the hours of 10 A.M. and 10 P.M., with not more than one such sprinkler per house.

The commission directed the company to provide the customer with a 1½-inch service connection if an automatic clock were furnished but agreed with the company's views on the need for sprinkling restrictions. The commission summarized its findings in these words:

> The most important and the most compelling facts developed by the record are that the loads imposed by sprinkler systems are already heavy, that the water demands of sprinkler systems have already occasioned plant expansion that otherwise would not be necessary, that excessive usage of water for lawn sprinkling combined with other usage has overtaxed the system during peak periods, and that there is danger of undue exhaustion of the underground water supply.

Under ideal conditions, the commission said, a system with a larger service connection would use no more water than the smaller system, assuming that each is turned off promptly when optimum watering has been accomplished. However, since the larger system would use a greater amount of water in a given period, the danger of waste is greater and strict controls are called for.

The restrictions which the commission found justified provided for the installation of sealed time clocks in systems over one inch in diameter designed to prevent use more than once in four days and to prevent use of more than one-half inch of water per watering. The hours of watering on all systems were limited to the peri-

od from 11 P.M. to 6 A.M. on not more than two nights per week, with a maximum water delivery per night of one-half inch of water. The company reserved the right to establish the nights that individual customers could sprinkle and to require customers with a one-inch or less system to install the sealed clocks if said customers did not abide by the restrictions as to frequency of sprinkling or amount of water per period. *Re Citizens Water Supply Co. Case 16487, May 25, 1954.*

Other Important Rulings

Revenue Not Sole Factor. The Missouri commission, in granting a railroad's application to abandon an open agency station, commented that the amount of revenue earned, although material in determining the use made of the station facilities, does not alone establish the presence or absence of a public need for the service. *Re Chicago, M., St. P. & P. R. Co. Case No. 12,571, May 14, 1954.*

Certificate Not Improper. A certificate granted a motor carrier to transport commodities requiring special equipment was not improper, held the Utah supreme court, merely because the description of the hauling authority did not give a complete listing of the commodities but just grouped them under a general heading. *Ashworth Transfer et al. v. Utah Pub. Service Commission et al. 268 P2d 990.*

Commission Finding Insufficient. A finding by the commission that it did "not accept" as equitable an agreement between carriers relating to the division of joint rates, will not sustain an order abrogating such agreement, according to the North Carolina supreme court, where a statute directs the commission to find that the agreed basis is unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers involved before substituting its own plan of division. *State ex rel. Utilities Commission v. Thurston Motor Lines, Inc. 81 SE2d 404.*

Stock Acquisition Authorized. An electric utility was authorized by the Missouri commission to acquire the remaining common stock of another electric corporation upon terms approved by its directors where the corporation had already acquired, with commission approval, the majority of the other company's stock, in order to eliminate problems arising from the existence of a small minority interest. *Re Union Electric Co. of Missouri, Case No. 12,651, May 19, 1954.*

Railroad Extension Enjoined. A railroad was enjoined by the United States district court from building a track in an area covered by another railroad where the proposed track was not a spur or industrial service track, but an extension, and the railroad did not have a certificate authorizing the building of such extension. *Chicago, M., St. P & P. R. Co. v. Northern P. R. Co. (1954) 120 F Supp 710.*

Cost Determination Not Required. The supreme court of Ohio, in upholding an order authorizing railroads to increase coal rates, held that where the question before the commission concerns a rate on only a single commodity and the rates as to all other commodities are not in question, and where the commission has to decide only whether the single commodity rate is reasonable, it has discretion in fixing such rate to base it upon matters

other than the valuation of the property of the railroad and the actual cost of operation. *Toledo Edison Co. et al. v. Ohio Pub. Utilities Commission (1954) 118 NE2d 531.*

Dial Telephone Rates. The Wisconsin commission did not consider that dial telephone rates, which would produce a return of 5.5 per cent on a net book value rate base, were unjust and unreasonable so far as subscribers were concerned. *Re Orfordville Teleph. Co. 2-U-3942, May 13, 1954.*

Additional Generating Facilities Authorized. A municipal electric plant should be authorized to purchase and install additional generating facilities, held the Wisconsin commission, notwithstanding that energy can be purchased from other utilities for less than the city's computed operating cost, since management is entitled to exercise discretion within a zone of reasonableness, and the proposed facilities will not impair the efficiency of the service, provide facilities unreasonably in excess of probable future requirements, or add to the cost of service without proportionately increasing the value or available quantity thereof. *Re City of Black River Falls, CA-3215, June 10, 1954.*

Titles and Index

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PUBLIC UTILITIES REPORTS

Titles

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PUBLIC UTILITIES REPORTS

ARKANSAS SUPREME COURT

Southwestern Bell Telephone Company

v.

Geraldine Bateman

No. 5-346
— Ark —, 266 SW2d 289
April 5, 1954

APPEAL *by telephone company from judgment imposing penalties for allegedly unfair discrimination; judgment reversed.*

Discrimination, § 241 — Burden of proof — Telephone subscribers.

1. A telephone subscriber who claims that he has been unfairly discriminated against has the burden of proving his charge, p. 4.

Statutes, § 19 — Interpretation — Penal provision.

2. A statute which provides that a telephone company pay a penalty of $5 for each day that it practices discrimination against persons making application for service is highly penal in nature and strict compliance with its terms is required, p. 4.

Discrimination, § 194 — Telephone deposit rule.

3. No unlawful discrimination exists when a telephone company requests an applicant for service to post a $25 deposit to secure payment of bills, where the company's regulation permitted the requiring of such deposit as it "deemed necessary" and where many other customers paid deposits of the same or larger amounts, p. 4.

Payment, § 34 — Arrearages of other persons — Denial of service — Deposit.

4. Telephone service cannot be denied to an applicant for the sole reason that her husband owed the telephone company for a phone rental, but this fact may be considered by the company in determining the applicant's credit rating in so far as such rating would affect the amount of deposit required, p. 5.

(MILLWEE and MCFADDIN, JJ., dissent.)

APPEARANCES: Blake Downie, Little Rock, for appellant; Coleman & Mayes, Paragould, for appellee.

HOLT, J.: This is a suit filed February 12, 1951, by appellee, Geraldine Bateman, under the provisions of § 73–1816, Ark Stats 1947, in which she seeks by mandamus to "enforce the furnishing" of telephone facilities in the residence in which she and her husband reside. Thereafter, on September 8, 1951, she filed an amended petition, alleging that appellant had unfairly discriminated against her and prayed for the penalties provided for under the above statute.

Appellant answered, denying all material allegations except admissions shown in an agreed statement of facts, presently set out, and affirmatively pleaded the Statute of Limitation.

The cause was submitted to the trial court on an agreed statement of facts, a jury having been waived, and judgment was rendered in favor of appellee for $2,935 against appellant as statutory penalties for 587 days,—the period from September 8, 1949, to April 19, 1951, at $5 per day.

This appeal followed.

For reversal, appellant first earnestly contends that "appellant's requirement that appellee post a $25 deposit before receiving telephone service did not constitute discrimination against appellee in violation of § 73–1816 of the Arkansas Statutes," in short, that appellee has failed, on the undisputed facts, to show any right to recover under this section, which requires that she and all applicants for service "first comply or offer to comply with the reasonable regulations of the company."

Since we have concluded that appellant is correct in this contention, we do not consider other assignments.

The stipulated facts were: "Defendant is a corporation doing a general telephone business in the city of Paragould, Arkansas, and plaintiff resides at 507 South Fourth Street, Paragould, Arkansas.

"Plaintiff applied for telephone service and an employee of defendant (which employee had authority to fix the amount of required deposit) originally asked a deposit of $5. Upon checking the defendant's records, however, and finding the balance owed by plaintiff's husband, which is explained hereinafter, a deposit of $25 was asked.

"Plaintiff thereafter and on February 8, 1949, demanded by registered letter that she be provided with a telephone at her residence, and offered to make a deposit of $5 as security for payment of bills, and a copy of this letter is attached hereto and made a part hereof as Exhibit 'A.' Defendant refused said request unless a cash deposit of $25 was made by plaintiff, for the reason that plaintiff's husband, with whom she was and still is living, was and still is obligated to defendant for an unpaid telephone bill that had been incurred by him as a co-partner in a business enterprise. Plaintiff had no legal or financial connection with this enterprise, but was married to her husband at the time the obligation was incurred. Plaintiff continued her efforts to secure telephone service, and at all times was ready and willing to make a $5 deposit. Defendant continued to refuse to connect service except upon the making of a cash deposit of $25, but offered to consider reduction or complete refund of the deposit in the event plaintiff's bills are handled

in a satisfactory manner. Plaintiff owes defendant no money and is employed and pays her own obligations from her income.

"On April 19, 1951, an employee of defendant who failed to check the defendant's records as to plaintiff's credit, accepted a deposit of $10 and connected residence party-line service for plaintiff. This service was changed to one-party residence service on September 25, 1951, at plaintiff's request and no additional deposit was required.

"Defendant's General Exchange Tariff, Advance Payments and Deposits Section, 4th Revised Sheet 1, had been in effect and on file with and approved by the Arkansas Public Service Commission and its predecessors since July 10, 1938, and provides as follows:

"A. If it is deemed necessary by the telephone company in safeguarding its interests, applicants for service or present customers may be required to make a deposit of an amount not to exceed two months' exchange service charges plus two months' estimated toll usage, to be applied in payment of any unpaid charges for exchange or toll service which may be rendered. Simple interest at the rate of 6 per cent per annum will be paid on such deposit, if held thirty days or more. . . .

"D. Any balance of the amounts deposited, credited to the customer's account is returned to the customer at the termination of the contract, or it may be returned at any time previous thereto at the option of the telephone company when it is deemed that the customer has established satisfactory credit.

"Defendant has many subscribers to the class of service for which plaintiff applied in the city of Paragould and elsewhere who have no deposit with defendant for the reason that their credit is established with defendant. Defendant has other customers in the city of Paragould and elsewhere who have a $5 deposit with defendant. Other deposits in the city of Paragould and elsewhere exceed the amount of $25, and in some cases run into hundreds of dollars as there is no arbitrary and fixed limitation as to the amount of deposit." (Here is listed the names of some twenty-five subscribers in Paragould, who have made deposits from $10 to $50.)

"It is further stipulated that the telephone bills of subscribers of the class in which plaintiff's phone would be are handled and collected by defendant company in accordance with the terms stated in their regular monthly statements, a copy of which is set out below. . . . (The copy of appellant's bill shows charges for local or exchange service are billed in advance.)

"All other requirements of defendant company have been met by plaintiff. . . .

"The foregoing stipulation is approved as the bill of exceptions herein, this 27 day of July, 1953."

Section 73–1816, above, provides: "Every telephone company doing business in this state and engaged in a general telephone business shall supply all applicants for telephone connection and facilities without discrimination or partiality, within ten days after written demand therefor; provided, such applicants comply or offer to comply with the reasonable regulations of the company, and no such company shall impose any condition or restric-

tion upon any such applicant that are [is] not imposed impartially upon all persons or companies in like situations; nor shall such company discriminate against any individual or company engaged in lawful business, by requiring as condition for furnishing such facilities that they shall not be used in the business of the applicant, or otherwise, under penalty of $100, and $5 per day for each day from the expiration of such notice until said demand is complied with or suit is instituted for penalty for failure to comply with said demand, for such discrimination, after compliance or offer to comply with the reasonable regulations of such company and the time to furnish the same has elapsed, to be recovered by the applicant whose application is so neglected or refused. Any person denied such telephone facilities shall also have the right to proceed by mandamus or other proper remedy to enforce the furnishing of same, ..."

We are not without long-established rules in considering cases of this nature.

[1, 2] From the outset, the burden was on appellee to show that she had been unfairly discriminated against, within the meaning of § 73–1816. This statute is highly penal and a strict compliance with its terms is required. " 'Nothing can be taken by intendment to show compliance with statutes of this kind.' " Rousseau v. Ed White Junior Shoe Co. (1953) — Ark —, 258 SW2d 240, 241.

[3] Material sections of the above statute were construed by this court in what may be termed our landmark case, Yancey v. Batesville Teleph. Co. (1907) 81 Ark 486, 494, 99 SW 679, 681, where it was said: "Every company is entitled to compensation for telephone facilities furnished by it. It may require the charges for such services to be paid in advance. . . . This power is given for its own protection. In the exercise of it, it may extend credit for such charges to persons it may deem deserving. This is a reasonable exercise of the power, and is essential to its success. No rule can be laid down by which the credit to which each person is entitled can be determined. This is dependent upon various circumstances, such as the amount of property he may have over and above his exemptions and liabilities, his promptness in paying his debts, his being contentious, a wrangler, a fault-finder, his honesty, integrity, and other qualities. The credit due each individual depends upon himself. It cannot be fixed by any rule, but must be and is left to the company to determine. The statute forbidding discriminations does not deny the right. It does not come within the evils the statute was intended to suppress. All are required to pay the same rates for the same service in like situations, but the time when it should be paid is within the peculiar province of the company to determine. This is a right of creditors, and there is no reason why it should be denied to telephone companies."

Bearing in mind the above rules of construction, we find no evidence presented here that even tends to show discrimination against appellee, or that the company's deposit demand of $25 was unreasonable. It is undisputed that many patrons in Paragould are required to deposit from $5 to $50 (or more, depending on the credit risk in

each case). Clearly, under § 73–1816, and the tariff provisions, above, appellant, company, had the right to require such a deposit as it "deemed necessary . . . in safeguarding its interest," so long as these requirements were reasonable and non-discriminatory.

This credit extended depends on each individual. "In its exercise, it (the company) may extend credit for such charges to persons it may deem deserving," and "no rule can be laid down by which the credit to which each person is entitled can be determined. . . . It cannot be fixed by any rule, but must be and is left to the company."

[4] We find no evidence that a $25 deposit requirement was unreasonable and discriminatory, on the evidence presented. We agree that service could not be denied appellee for the sole reason that her husband owed the company for a phone rental, which he refused to pay, but this fact may be considered by the company in connection with other "circumstances" and "qualities," which the company might take into account in determining each person's credit rating.

It is not disputed that appellee and her husband were living together in the residence in which the telephone was installed and both could use it at will and tolls could be charged against it by either. In fact, appellee, subscriber, under the "General Exchange Tariff Rules and Regulations, 7th Div., Revised Sheet 2," on file with our public service commission, was required to pay all long-distance messages originating from her phone, whether O.K.'d by her or not. Southwestern Teleg. & Teleph. Co. v. Sharp & White, 118 Ark 541, PUR1915F, 418, 177 SW 25, LRA1915E 323. We take judicial notice of these rules and regulations, State ex rel. Attorney General v. State Board of Education (1937) 195 Ark 222, 112 SW2d 18; Seubold v. Fort Smith Special School Dist. (1951) 218 Ark 560, 237 SW2d 884, and Koonce v. Woods (1947) 211 Ark 440, 201 SW2d 748.

There is no evidence that appellee had ever had a telephone installed in her name before and no evidence that the company had ever had an opportunity to establish her credit rating. Appellee conceded that the company had the right to require sufficient deposit to cover two months' exchange service charges, plus two months' estimated tolls. She offered no proof that these charges would not be sufficient to justify a $25 deposit, although the burden was on her to make strict proof. She was "employed and pays her own obligations from her income," but the nature of her work, the kind of employment in which she was engaged, or the extent of her earnings, were not disclosed by this record.

Of significance is the fact that later, appellee did make a deposit of $10 and was provided with telephone service. It would be a fair inference that she did not consider a $10 deposit to be discriminatory, although it would be double the customary $5 deposit.

We conclude, therefore, as indicated, that there is no substantial evidence in this case to warrant a recovery on behalf of appellee and accordingly, the judgment is reversed, and since the cause appears to be fully developed, it is dismissed.

McFaddin and Millwee, JJ., dissent.

MILLWEE, J. (dissenting): In

reaching the conclusion that there was no evidence which "even tends to show" discrimination or unreasonableness in appellant's demand for a $25 deposit of appellee, the majority have arbitrarily substituted their own findings on a factual issue for those of the trial court, sitting as a jury. In reaching the opposite conclusion, the able trial court rendered an exhaustive and learned opinion in which he explored every phase of the present controversy, factual and legal. After citing and examining the leading authorities on the question of whether appellant's action was discriminatory under our statute, the opinion recites: "The net result of the defendant's actions under the facts of this case is that it has completely departed from its own commission approved rule, and on the statement of facts as to the plaintiff alone, promulgated a new one. To express it otherwise, they have said to the public generally, 'If you apply for service, we do not have to but may require a two months' deposit on service charges and estimated toll usages and we will calculate that amount as best we can taking into consideration our best estimate of what we think your long distance calls will amount to in two months' time.' To this plaintiff they have said, in effect, 'Regardless of the amount two months' service and estimated toll usage in your case comes to, we are going to require you to deposit $25 because your husband's company owes us an unpaid debt.' This to my mind, in the words of the statute (Ark Stat Ann § 73–1816) is a failure to 'supply all applicants for telephone connection and facilities without discrimination or partiality,' and a violation of that clause which reads, 'no such company shall impose any conditions or restrictions upon any applicant that are not imposed impartially upon all persons in like situations.' The plaintiff is entitled to recover.

"Even if the company could be permitted to ignore the rule which it has proclaimed, the common law rule of the Yancey Case should not give them relief. It was there said, 'The credit due each individual depends upon himself.' Here, according to the stipulation of facts, the defendant's employee made a determination of the credit allowable to the plaintiff, an employed and self-supporting person, and a deposit of $5 required as a result thereof. Quoting from the stipulation of facts, we find the amount of deposit raised to $25 'for the reason that plaintiff's husband, with whom she was and still is living, was and still is obligated to defendant for an unpaid telephone bill that had been incurred by him as a copartner in a business enterprise.' So, in this case, the defendant company used a credit criteria not depending 'upon herself,' but rather upon that of one (even though it be her husband) not a party to the proposed contract. The company requires its monthly service charge to be paid in advance, and if not paid, the telephone can be readily and summarily removed. It would be strange indeed if the company did not also make cumulative records as they occur of charges involved in the long-distance calls placed from the phones of its subscribers, and if that be true, at any time it appeared that the user's credit was being overextended they could require a deposit to protect them, or remove the instrument. This is mentioned merely to

indicate that the defendant company could have protected itself and was being overly concerned (if they were) of the plaintiff's credit standing because of her relationship to a past debtor. It would obviously be unfair that one's credit standing should be determined not from his personal abilities and record, but solely from the credit standing of one's relations. For these reasons, the court in the Yancey Case wisely limited the rule there announced to a consideration of the individual's personal credit standing.

"In passing, it may be noted that according to the statement of facts varying deposits are required of different individuals in the area concerned. However, this does not enlighten the situation, for, in so far as the record is concerned, these may well have been determined within the confines and limitations of the company's rules hereinbefore set out. So far as this record is concerned, the plaintiff is the only applicant for service (or customer) whose amount of deposit has been determined, not by her own credit rating, but by that of a noncontracting party.

"The plaintiff is therefore entitled to recover from the defendant the statutory penalty of $5 per day to be reckoned as set out in this opinion previously."

When the trial court's findings are considered along with the stipulation of facts, it should be apparent to anyone that they are based on substantial evidence. In my humble judgment, they constitute a complete and irrefutable answer to the unsupported action of the majority in substituting their own views for those of the trial court.

The judgment should be affirmed, and I respectfully dissent.

McFaddin, J., joins in this dissent.

NEW JERSEY SUPREME COURT

New Jersey Power & Light Company

v.

State Department of Public Utilities, Board of Public Utility Commissioners

No. A-106
— NJ —, 104 A2d 1
March 29, 1954

APPEAL *from commission order dismissing electric company's request for authority to add surcharge to rate schedule; affirmed. For commission decision, see (1953) 1 PUR3d 54.*

Return, § 43 — Surcharge to recoup past deficits.

1. A company which has failed to secure sufficient earnings in past years

to keep its investment unimpaired and pay a fair return cannot erect out of past deficits a legal basis for imposing a surcharge on its current rate to recoup the deficits, regardless of the reason for the occurrence of the deficits in the first instance, p. 10.

Rates, § 81 — Powers of board — Surcharge on rate schedules — Past losses.

2. Sections of a state statute dealing with the power of the board of public utility commissioners to discontinue a surcharge and to request repayment of any excess surcharge do not give the board power to permit a utility to add a surcharge to rate schedules for the purpose of permitting recoupment of past losses, p. 16.

APPEARANCES: Joseph F. Autenrieth, Newark, for appellant (Autenrieth & Rochester, Newark, attorneys); Joseph Harrison, Patterson, for respondent (Wesley L. Lance, Glen Gardner, co-rate counsel, Joseph M. Jacobs, Newark, on the brief, Theodore D. Parsons, Attorney General); Ryman Herr, Flemington, for intervenors, Riegel Paper Corp. and Sanco Piece Dye Works, Inc. (Herr & Fisher, Flemington, attorneys).

The opinion of the court was delivered by

VANDERBILT, CJ.: This appeal by the New Jersey Power & Light Company from a decision of the board of public utility commissioners [1 PUR 3d 54] dismissing it application for a surcharge of 5 per cent on its newly established rates comes before us on the company's petition for certification granted by us (1953) 14 NJ 15, 101 A2d 117.

I. The Facts

In October, 1952, the company applied to the board for a revision of its rates so that it could obtain additional revenue of $1,400,000 annually. In a decision handed down in May, 1953 [1 PUR3d 191] the board granted rate increases that would allow the company additional revenue of $991,141 a year, based on a return of 5.85 per cent. No appeal was taken from this decision.

On June 3, 1953, two days after the new schedule of rates went into operation, the company filed with the board a notice that effective July 15, 1953, it would increase its rates by the addition of a surcharge of 5 per cent to the new rates, effective for two years to permit the company to recoup a deficiency of $1,238,000 in gross revenue that had resulted under the order of the board denying the application of the company for increased rates. The purpose of this surcharge was to restore to the company an alleged deficiency in net income of $578,000 in 1951, 1952, and the first five months of 1953 under the board's order in the application of 1950 and thus to permit the company to obtain the minimum return contemplated by the earlier order of the board.

In the proceedings commenced in 1950 the board found the company's rate of return for the year 1950 after adjustments in revenues and expenses to be 6.52 per cent on a net original cost rate base (91 PUR NS 331, 340). This return the board found not unreasonable, stating: "Actual operating results thus far available for 1951 do not support the company's

claim that 1951 earnings will be lower than experienced in 1950. If anything, there are significant indications that the reverse may be true." (91 PUR NS 331, 341). The actual return determined on the basis of the same adjustments to earnings as those made by the board in the 1950 case and on a rate base determined in the same manner as that found by the board in that case, earned by the company in 1951 was 5.19 per cent, in 1952 was 4.65 per cent and, for the five months ending May 31, 1953, was 1.99 per cent, which is equivalent to 4.78 per cent on an annual basis.

The company's calculations of the deficiencies in returns which the company suffered as a direct result of the board's action in the 1950 rate case were submitted on different bases:

First, the deficiencies suffered during 1951, 1952, and the first five months of 1953 were calculated by taking the amount by which the gross revenue was less than the anticipated gross revenue applying the lower range of reasonable return found by the board in the 1950 proceedings, i.e., 5.53 per cent on the net original cost rate base. On this basis, the deficiencies in returns aggregated $589,000. Because of income taxes and gross receipt taxes, it would require $1,261,700 in gross revenues to recoup these deficiencies;

Second, the deficiencies suffered by the company were calculated by limiting them to 1952 and the first five months of 1953 and utilizing the amount below the allowable rate of return of 5.85 per cent on the net original cost rate base found by the board on May 13, 1953, in the company's 1952 rate proceeding as a result of which, as hereinbefore stated, the company was permitted to put increased rates into effect on June 1, 1953. In the 1952 proceedings the board expressly admitted the existence of a deficiency in returns in 1952 of $463,150 below the allowed 5.85 per cent rate of return and conceded the existence of a deficiency in returns for the first five months of 1953 of $185,000 when calculated on the same basis. Thus the total deficiencies for 1952 and the first five months of 1953 aggregated $647,000 and the gross revenues required to make good such deficiencies amounted to $1,384,600;

Third, calculations of deficiencies in returns based upon the upper range of reasonableness of rate return found by the board in the 1950 proceeding, i.e., 6.52 per cent, were also submitted. The deficits under this calculation were still greater both as to deficits in returns and required gross revenue to recoup the deficiency in such returns.

The amount of deficiencies in returns which the company sought to recover in this proceeding was slightly below the lowest of the three amounts so calculated, i.e., $587,000, and it is this amount which is the subject of appeal.

The decision of the board in the 1950 rate case stated that rates of return from 5.53 per cent to 6.52 per cent lie within the range of reasonableness (91 PUR NS 331, 365). The company's proofs in this proceeding established deficiencies in returns for the years 1951, 1952, and five months ending May 31, 1953, below the lower range of rate of return above stated. The company's proposed recoupment of deficiencies in returns through a 5 per cent surcharge was estimated to be

realized over a period of about two years in which event the surcharge of 5 per cent would be terminated. The board in the 1952 rate case found that the company was entitled to a rate of return of 5.85 per cent on a net original cost rate based on operations for the year 1952; that this rate of return had not been earned by the company in the year 1952 and that it had suffered a deficiency in return of $463,150 for that year, the equivalent of $991,141 deficiency in gross revenue.

At the conclusion of the company's case the state and two large consumers, the Riegel Paper Corporation and the Sanco Piece Dye Works, Inc., which had been permitted to intervene, moved for the dismissal of the petition for the surcharge "upon the ground that the proposed surcharge is based upon erroneous premises of fact and law, and upon unwarranted assumptions made in the statements, testimony, and exhibits presented by New Jersey Power & Light Company." They argued that the company erred in its contention that in the 1950 proceeding [82 PUR NS 554] the board had actually set a minimum return of 5.53 per cent and also that the board lacked the power to permit such a surcharge. The board granted the motion and from this decision the company appeals.

II. The Doctrine of the Hackensack Water Company Case

[1] The company rests its case primarily on Hackensack Water Co. v. Public Utility Comrs. (1922) 98 NJL 41, 119 Atl 84; (1924) 100 NJL 177, 124 Atl 925. The case, which was decided by a single justice in the former supreme court and affirmed in the court of errors and appeals on the opinion below, held that a public utility is entitled to recoup deficits in operations by temporary surcharges added to its regular rates. In that case the board had relied on Galveston Electric Co. v. City of Galveston, 258 US 388, PUR1922D 159, 66 L ed 678, 42 S Ct 351, in denying such surcharges to the company, but the court, though likewise relying on that case, gave it an interpretation diametrically opposed to that of the board. The Galveston Case, decided seven months before the Hackensack Case, was the first expression of the United States Supreme Court on the question of whether or not it was confiscatory under the Fourteenth Amendment not to allow a public utility to recoup deficits in operations by surcharges. That court answered the question squarely in the negative in an opinion by Mr. Justice Brandeis, holding that public utilities were not entitled to a guarantee on their investment:

"If net deficits so estimated were made a factor in the rate base, recognition of 8 per cent as a fair return on the continuing investment would imply substantially a guarantee by the community that the investor will net on his investment ultimately a return of 8 per cent yearly, with interest compounded on deferred payments; provided only that the traffic will, in course of time, bear a rate high enough to produce that amount." 258 US 388, at 394, PUR1922D 159, at 165, 66 L ed 678, at 682, 42 S Ct 351, at 354.

This was the view of the case adopted by the board but our former supreme court, reasoning from certain language used by Mr. Justice Brandeis in his opinion, sought to confine its

operation to those instances where the deficits were produced by the acts or failures of the public utility and not to apply it to cases where the deficits were caused by the rulings of state regulatory bodies:

"The board [of public utility commissioners] relies upon the recent decision of the United States Supreme Court in Galveston Electric Co. v. [City of] Galveston [258 US 388, PUR1922D 159, 165, 66 L ed 678, 42 S Ct 351], but this view of the effect of that decision seems erroneous. Mr. Justice Brandeis says: 'A company which has failed to secure from year to year sufficient earnings to keep the investment unimpaired and to pay a fair return, whether its failure was the result of imprudence in engaging in the enterprise, or of errors in management, or of omission to exact proper prices for its output, cannot erect out of past deficits a legal basis for holding confiscatory for the future rates which would, on the basis of present reproduction value, otherwise be compensatory.'

"It might well be held that the court, in naming these three species of deficits (imprudence in engaging in the enterprise, errors in management, and omission to exact proper prices), meant to make an enumeration of the cases to which the opinion applies, none of which is the present case, but it is unnecessary to go as far as that, and it may be conceded that the list is not a complete enumeration, and that other causes may occur which may stand on the same legal footing. Be that as it may, the reasoning of the opinion applies only to deficits due to the conduct of the public utility itself, and does not justify the refusal to include deficits that are due to the acts of the public authorities alone." 98 NJL 41, *supra*, at 43, 44, 119 Atl 84, at 85.

Georgia R. & Power Co. v. Georgia R. Commission (DC Ga) PUR1922C 744, 278 Fed 242, decided a few months before the Hackensack Case, had been cited to the court in the argument of the Hackensack Case but the court rejected its holding which was as follows:

"The claim that the failure to earn a reasonable return, if established, should now be either allowed as capital investment or amortized under this or future rates we cannot allow. To concede this as a right would be to guarantee income, and would raise a correlative duty to account for earnings beyond what were reasonable in the past. No limit could be placed to the period of the inquiry, nor could justice really be done by it to the individual stockholders or consumers actually concerned, for these are constantly changing. *A rate established as reasonable, whether by the company or by the commission, is not guaranteed by the commission or the public. Whether it will actually yield more or less than a fair return during its continuance is a risk of the business.* We do not deny that it is within the discretion of the commission to consider the experience of the immediate past in fixing a just rate for the future, but we hold that no legal right exists to have disappointments or surprises in results balanced." (Italics supplied.) (PUR1922C at 751, 278 Fed at 247.)

The decision of the district court, *supra*, was affirmed on appeal to the United States Supreme Court, 262 US

625, PUR1923D 1, 67 L ed 1144, 43 S Ct 680, the court in an opinion again by Mr. Justice Brandeis holding:

"That past losses are not to be capitalized as property on which the fair return is based was held in [City of] Knoxville v. Knoxville Water Co. (1909) 212 US 1, 14, 53 L ed 371, 29 S Ct 148; Galveston Electric Co. v. [City of] Galveston, *supra*. Here this conclusion seems ever clearer than it was in those cases. The losses under consideration in the case at bar were obviously not a part of development cost. They were due to insufficiency of previous rates." (262 US 625, at 632, PUR1923D 1, at 5, 67 L ed 1144, at 1148, 43 S Ct 680, at 682.)

The sole dissent from this opinion was by Mr. Justice McKenna, who took exception to the italicized words quoted from the district court's opinion, *supra*, apparently on the ground that it ran counter to the federal Constitution. His dissent gives added weight to the scope of the decision of the court. This pronouncement came after the decision of our former supreme court in the Hackensack Case but before the decision in the court of errors and appeals, where the Georgia Railway Case in the United States Supreme Court was cited to the court but was not followed by it.

In Bluefield Water Works & Improve. Co. v. West Virginia Pub. Service Commission, 262 US 679, PUR1923D 11, 67 L ed 1176, 43 S Ct 675, decided on the same day as the Georgia Railway Case, *supra*, the United States Supreme Court, speaking through Mr. Justice Butler, recognized that:

". . . the company may not insist as a matter of constitutional right that past losses be made up by rates to be applied in the present and future . . . ." (262 US 679, at 694, PUR1923D 11, at 22, 67 L ed 1176, at 1183, 43 S Ct 675.)

To the same effect is the same justice's observation in Public Utility Comrs. v. New York Teleph. Co. 271 US 23, at 31, PUR1926C 740, at 745, 70 L ed 808, at 812, 46 S Ct 363, at 366.

"If there is no return, or if the amount is less than a reasonable return, the company must bear the loss. Past losses cannot be used to enhance the value of the property or to support a claim that rates for the future are confiscatory."

The rule became so well established as to be stated summarily in Wisconsin Teleph. Co. v. Wisconsin Pub. Service Commission (1939) 232 Wis 274, 30 PUR NS 65, 287 NW 122 (certiorari denied (1940) 309 US 657, 84 L ed 1006, 60 S Ct 514):

"As already pointed out, the cases hold that in establishing a rate for the future and in the absence of statutory authorization therefor, the commission may not amortize a loss or make a rate sufficiently low to recapture the excesses." (30 PUR NS 65, at 85, 287 NW 122, at 137.)

That the federal rule works both ways was demonstrated in Los Angeles Gas & E. Corp. v. California R. Commission, 289 US 287, at 313, PUR1933C 229, at 246, 77 L ed 1180, at 1197, 53 S Ct 637, at 647, where Mr. Chief Justice Hughes, in speaking for the court, said:

"Deficits in the past do not afford a legal basis for invalidating rates, otherwise compensatory, any more than

past profits can be used to sustain confiscatory rates for the future."

Thus it is clear that while there was some justification in state decisions for the holding in the Hackensack Case when it was first handed down in our former supreme court, the trend of the decisions has been in the opposite direction not only in the federal courts but also in the state courts and before state commissions. Western Oklahoma Gas & Fuel Co. v. State (1925) 113 Okl 126, PUR1926B 505, 239 Pac 588, 591; Re Great Northern Utilities Co. (Mont 1938) 26 PUR NS 393, 397; Re New York Teleph. Co. (NY 1950) 84 PUR NS 267, 295; Re Carolina Mountain Teleph. Co. (NC 1951) 89 PUR NS 13, 19; Re Southwestern Bell Teleph. Co. (Mo 1952) 92 PUR NS 481, 502. The rationale of these decisions is well summarized in Hope Nat. Gas Co. v. Federal Power Commission (CA4th 1952) 94 PUR NS 375, 382, 196 F2d 803, 808, where Chief Judge Parker said:

"With changes in economic conditions rates must be changed from time to time, and the lag which necessarily accompanies the making of changes may result to the benefit of the utility as well as to its detriment. . . .

"It is true, of course, that a utility is entitled to rates that are just and reasonable; but this is not to say that rates must fluctuate automatically with every change in economic conditions or that a reasonable time may not be allowed for determining the reasonableness of a proposed increase in rates before it is allowed to go into effect. Any loss sustained by a maintenance of the status quo while such determination is being made is properly considered, not as a violation of constitutional right, but as a necessary incident of rate regulation so long as the period of suspension does not 'overpass the bounds of reason.' See American Teleph. & Teleg. Co. v. United States (1936) 299 US 232, 247, 16 PUR NS 225, 81 L ed 142, 57 S Ct 170, 177; Federal Power Commission v. East Ohio Gas Co. (1950) 338 US 464, 475, 82 PUR NS 1, 94 L ed 268, 70 S Ct 266."

Not only has the decision in the Hackensack Case been rendered ineffectual by the course of federal decisions, but the decision has been ignored by the board for over a quarter of a century in complying with its statutory duty to "fix just and reasonable . . . rates." RS 48:2–21, NJSA. It will serve no good purpose to review those decisions of the board *seriatim*; suffice it to say that in the instances where the orders of the board were taken to court the question of the right to surcharge was not raised and the Hackensack Case was never cited. Plainfield Union Water Co. v. Public Utility Comrs. 6 NJ Mis R 267, PUR 1928C 657, 140 Atl 785; Middlesex Water Co. v. Public Utility Comrs. 6 NJ Mis R 107, PUR1928C 589, 140 Atl 256; Plainfield Union Water Co. v. Public Utility Comrs. (1936) 117 NJL 18, 15 PUR NS 410, 186 Atl 692; New Jersey Suburban Water Co. v. Public Utility Comrs. (1939) 122 NJL 54, 28 PUR NS 57, 4 A2d 47, affirmed (1939) 123 NJL 303, 306, 31 PUR NS 219, 8 A2d 350. On the contrary in Acquackanonk Water Co. v. Public Utility Comrs. (1923) 1 NJ Mis R 575, 579, 125 Atl 33, affirmed without opinion, 100 NJL 169, PUR 1924E 436, 440, 125 Atl 33, 35,

though the Hackensack Case was not mentioned, the decision was opposed to the doctrine of that case:

"The next point is that the board was in error in not taking into account the deficiency in earnings caused by the action of the board in preventing the companies from obtaining adequate rates during the litigation through its order suspending the posted rates. But the companies were collecting all the rates they were entitled by law to collect, and the board would not have been justified in undertaking to make up any such deficiencies."

Looking backward in the light of subsequent decisions, it is not difficult to perceive the inherent contradictions in the Hackensack decision. Thus the opinion concedes:

"It is to be sure not for the public utility board to guarantee a rate to the public utility company, and I agree that it would be improper to allow the public utility company to capitalize its losses . . . . To allow all deficits to be capitalized and added to the base value would be unjust to future consumers, who would be burdened perpetually . . . . To make up the loss of the company by increase in the rate for a single year would impose an undue burden on present consumers." 98 NJL 41, *supra,* at p. 44, 119 Atl 84, at 85.

These views, while consistent with the prevailing rule in the federal cases hereinbefore cited, are obviously at variance with the conclusions of the decision itself. Thus: ". . . there is nothing unfair in holding the public to a guarantee that the rate fixed shall come within the authority given by the statute and be just and reasonable. . . ." (98 NJL at 44, 119 A at 86), ignoring the fact that the board cannot make a guarantee of return to a public utility. Again the board's duty under the statute is to fix "just and reasonable . . . rates," RS 48:2–21, NJSA, but the opinion holds:

"The usual method of correcting the error, after the loss is ascertained, is by amortization, by allowing an additional charge that is a higher rate, for such length of time as will suffice to wipe out the deficit." (98 NJL at 44, 119 Atl at 86.)

To do this would be adding a further charge to rates that are already just and reasonable, which is beyond the board's powers. Finally the opinion states:

"The consumer will then pay the cost of the experiment, but it will be so distributed that it may be paid during what may be called the life of the experiment." (98 NJL at 45, 119 Atl at 86.)

Obviously this is not so, because the surcharge is not imposed until "the experiment is at an end" and the imposition of a surcharge is therefore inconsistent with its being paid for "during the life of the experiment." Nor is it at all clear if a public utility may not capitalize its losses, or impose them on it present customers for a single year, as the opinion concedes it cannot, why it should be permitted to allocate such surcharges, admittedly imposed above just and reasonable rates, on its present and future customers for a period of years.

The fundamental defect of the Hackensack opinion in its practical operation is that it requires the board to look both forward and backward in rate making when the orderly processes of rate making are necessarily

present and prospective if rate making is to be effective. The decision would authorize just and reasonable rates for the present and future and then add thereto surcharges for the past errors of "a rate-making experiment." This point of view is inconsistent with the businesslike processes of rate making that have received the approval of this court:

"Where, by reason of circumstances beyond the control of the utility and unforeseeable at the time of the rate order, it becomes apparent that the existing rates are insufficient to provide a fair rate of return, and rates reasonable both to the public utility and the public, the remedy is not by way of invalidation of the past order on the basis of the subsequent events introduced in evidence before the appellate court, but by way of filing new schedules of rates in accordance with the statutory requirements. . . ." Re New Jersey Power & Light Co. (1952) 9 NJ 498, 527, 95 PUR NS 467, 484, 89 A2d 26, 40.

See also New Jersey Bell Teleph. Co. v. Public Utility Comrs. (1953) 12 NJ 568, 582–583, 100 PUR NS 379, 97 A2d 602. The present practice, as set forth in these cases, is fair to the public utility, for it can act as speedily as it sees fit to move for a correction of inadequate rates, and it is fair to the consumer in safeguarding him from surprise surcharges dating back over years that he had a right to assume were finished business for him and possibly over years when he was not even a consumer.

Not only does the company have its power to file new rate schedules, as above set forth, but it may apply for ad interim relief through negotiation and agreement:

"The board may, during the pendency of any hearing instituted by it, on its own initiative or on complaint, in which the approval or fixing of just and reasonable individual rates, joint rates, tolls, charges or schedules thereof, as well as commutation, mileage, or other special rates is in issue, *or at any other time,* negotiate and agree with any public utility for an adjustment of the individual rates, joint rates, tolls, charges or schedules thereof, as well as commutation, mileage or other special rates for any product or service supplied or rendered by such public utility. . . . Such adjustment may be for, or without, a specified limit of time. In no event shall any such adjustment be regarded as contractual. Such adjustment shall at all times be subject to change through the proceedings provided for by this chapter, or through negotiation and agreement under this section. The board as a part of any such negotiation and adjustment shall provide for the continuance, suspension, or other disposition of any hearing of the character aforesaid then pending." RS 48:2–21.1, NJSA. (Italics supplied.)

The company made no application under this statute. On the contrary, even after the affirmance by this court of its appeal from the 1950 application for rate increases (May 26, 1952), it waited five months before it filed its next application for a rate increase on October 16, 1952, and it made no application for surcharges until two days after this application became effective on June 1, 1953.

The course of opinions in the United

States Supreme Court since the handing down of the Hackensack decision, the fact that the decision has long been ignored both in proceedings before the board and in the courts, and that decisions have been handed down here in conflict with it, the inherent contradictions of the decisions that have become apparent in the course of time, its unworkableness in practice and its direct conflict with the sound principles of rate making approved in recent decisions of this court, all indicate the necessity of our overruling Hackensack Water Co. v. Public Utility Comrs. (1922) 98 NJL 41, 119 Atl 84 and (1924) 100 NJL 177, 124 Atl 925, *supra,* and we accordingly so do.

III. The Applicable Statutes

[2] The company relies not only on the Hackensack Case, but also on L 1935, Chap 48 (RS 48:2–29.3 and 48:2–29.4, NJSA) which reads as follows:

"Whenever any public utility shall heretofore have been or shall hereafter be authorized by the board to collect a surcharge to raise a definite amount of money or for a specified purpose and the board, after hearing upon notice, shall determine that the amount authorized has been collected, or that the specified purpose has been accomplished, the board is hereby empowered to require by an order in writing the immediate discontinuance of such surcharge." (RS 48:2–29.3, NJSA)

"Whenever after hearing upon notice the board shall determine that any public utility has collected by means of a surcharge an amount of money exceeding the authorized amount or has continued to collect a surcharge after the specified purpose for which it was authorized has been accomplished, the board may require such public utility by an order in writing to repay the excess so collected to those from whom the same was collected." (RS 48:2–29.4, NJSA)

The company claims that the statute relates to surcharges authorized by the Hackensack Case in rate proceedings and that the statute "could have had no purpose but to clarify and enlarge the board's power in dealing with surcharges of that nature." This contention is fully answered in Plainfield Union Water Co. v. Public Utility Comrs. *supra* (1936) 117 NJL 18, 15 PUR NS 410, 186 A 692, a case involving the quoted statute. There the court had under review an order of the board of June 5, 1935 [10 PUR NS 49] directing the public utility to repay an amount found by the board to have been, to quote the board's order, "*'without warrant or justification exacted by way of surcharge from the City by the company.'*" (Italics supplied.) It is thus apparent on the face of the order of the board that the controversy did not arise in a rate case under the purported authority of the Hackensack Case. If there be any doubt on this point, it is set at rest by the opinion of the court. The public utility claimed that:

". . . *the payments were voluntarily made.* The board at the hearing refused to go into this question, and properly as we think; for its function was limited by the statute and did not include defenses to a recovery which would naturally be for the determination of a court and jury, or in proper cases, a court of equity." (117

NJL at p. 20, 15 PUR NS at p. 412, 186 Atl at p. 693)

The payments having been voluntarily made, they were manifestly not of the kind contemplated by the Hackensack decision.

It is important, too, to observe that in the Plainfield Union Case the court, following the earlier decision of National Radiator Co. v. Pennsylvania R. Co. (1928) 6 NJ Mis R 778, 781, PUR1929A 159, 143 Atl 85, and in line with an earlier ruling of the board, Flanagan v. Hackensack Water Co. (NJ) PUR1933B 395, conceded the contention of the public utility that the board had no statutory power to order a repayment until the passage of the statute. This situation discloses still another defect of the Hackensack decision; under it a public utility might collect a surcharge by appropriate proceedings before the board, but the board, until the 1935 statute was passed, could not compel a refund from the company.

There are, moreover, other grounds for holding RS 48:2–29.3, NJSA ineffective. RS 48:2–21, NJSA sets forth the fundamental powers of the board relating to rate making. The board, after hearing upon notice, may ". . . fix just and reasonable . . . rates." In every such proceeding the board "shall complete and close the hearing and enter its final order within six months." "When any public utility shall increase any existing . . . rates . . . or change or alter any existing classification, the board . . . shall have power after hearing, upon notice, . . . to determine whether the increase, change, or alteration is just and reasonable." The board may suspend the change up to three months and if need be for an additional three months. "The board shall approve the increase, change or alteration upon being satisfied that the same is just and reasonable." With RS 48:2–21, NJSA is to be read L 1935, Chap 49 (RS 48:2–21.1, NJSA (*supra*)), authorizing the board during the pendency of a rate proceeding "or at any other time" to "negotiate and agree with any public utility" for an adjustment of rates either for a specified term or otherwise. "In no event shall any such adjustment be regarded as contractual," but they shall be subject to proceedings provided for in the public utility laws or under this section. RS 48:2–21.1, NJSA read with RS 48:2–21, NJSA is the legislative answer to the doctrine of the "experimental rate" enunciated in the Hackensack Case.

These statutes taken together present a complete statutory program of rate making designed to produce speedy determinations by the board, with ad interim relief if necessary, obviating any resort to the doctrine of the Hackensack Case. These statutes embody principles of rate making fundamentally at variance not only with the Hackensack Case but also with the application of RS 48:2–29.3, NJSA, *supra,* sought by the company, for these statutes look forward in rate making in consonance with the pertinent decisions of the United States Supreme Court whereas the Hackensack Case, and RS 48:2–29.3, NJSA, under the application sought by the company, look backward. It is on the basis of these statutes that all of the rate-making cases in this court in recent years have been decided; see Re

New Jersey Power & Light Co. (1952) *supra,* 9 NJ 498, 95 PUR NS 467, 89 A2d 26; New Jersey Bell Teleph. Co. v. Public Utility Comrs. *supra* (1953) 12 NJ 568, 100 PUR NS 379, 97 A2d 602.

The company cites no case where RS 48:2–29.3, NJSA has been applied to surcharges to recoup past deficits in returns. Rather has it been applied to cases where temporary increases or surcharges have been allowed pending final determination of a rate case under RS 48:2–21.1, NJSA, *supra.*

Not only did the company not avail itself of any application for temporary rates under RS 48:2–21.1, NJSA, but the sources of deficiency in income claimed by it and disclosed to the board such as increases in federal income taxes, loss due to a severe ice storm in January, 1953, increases in wages, costs, and interchange (see Re New Jersey Power & Light Co. *supra,* 9 NJ 498, 530, 95 PUR NS 467, 89 A2d 26) and their effect on its own calculated rate base in 1951, 1952, and 1953 appear related to the board's order and all could have been met by application for temporary rates under RS 48:2–21.1, NJSA, *supra.* We therefore cannot agree with the company's contention that "recoupment of deficits by surcharging the already established just and reasonable rates is the only effective remedy available to the company." RS 48:2–29.3, NJSA under the construction urged by the company is clearly inconsistent in so far as recoupment of past deficits by fresh surcharges is concerned with RS 48:2–21.1, NJSA, which provides for temporary relief in rate proceedings under RS 48:2–21, NJSA. By reason of such inconsistency it must be disregarded with respect to applications to recoup past deficits by surcharges. Such has been the course in all recent rate cases in this court; Re New Jersey Power & Light Co. *supra* (1952) 9 NJ 498, 95 PUR NS 467, 89 A2d 26; New Jersey Bell Teleph. Co. v. Public Utility Comrs. *supra* (1953) 12 NJ 568, 100 PUR NS 379, 97 A2d 602.

Any difficulties with respect to deficits of anticipated income in 1951, 1952, or the first five months of 1953 (there was, of course, no real deficit during this period in the sense of the company making no profit) are due to the failure of the company to pursue its available statutory remedies. On November 21, 1950, it stipulated that it would not place the rates filed on June 26, 1950, in operation until March 15, 1951, without the prior approval of the board. From April 27, 1951 when the board denied its application for increased rates to May 26, 1952, when its appeal to the courts was decided upholding the earlier determination of the board, it failed to resort to RS 48:2–21.1, NJSA. From May 26, 1952, to October 16, 1952, it failed to file new schedules of rates. From October 16, 1952, to May 13, 1953, when the board approved new rates effective June 1, 1953, it again failed to resort to RS 48:2–21.1, NJSA.

For the reasons herein stated, the order of the board dismissing the company's application for a surcharge is affirmed.

For affirmance: Chief Justice

Vanderbilt, and Justices Heher, Burling, and Brennan—4.

For reversal: Justice Oliphant—1

UNITED STATES SUPREME COURT

Federal Communications Commission

v.

American Broadcasting Company, Inc.

No. 117

Federal Communications Commission v. National Broadcasting Company, Inc., No. 118; Federal Communications Commission v. Columbia Broadcasting System, Inc., No. 119

347 US 284, 98 L ed —, 74 S Ct 593
April 5, 1954

APPEAL by Federal Communications Commission from lower court's judgment restraining commission from enforcing rule prohibiting broadcasting of give-away programs; affirmed. Motion for leave to intervene as amicus curiae and to file petition for rehearing denied (May 17, 1954) 74 S Ct 773.

Radio and television, § 2 — Federal Communications Commission — Power to enforce statute — Lottery.

1. The Federal Communications Commission has the power and duty to enforce a federal statute prohibiting the broadcasting of any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance, and such enforcement may be carried out either by general rule or individual decisions, p. 22.

Radio and television, § 2 — Federal Communications Commission — Federal statute — Give-away programs.

2. The Federal Communications Commission may not make a give-away program illegal by agency action unless such program is illegal under a statute prohibiting the broadcasting of any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance, p. 22.

Radio and television, § 8 — Programs — Lotteries — Elements.

3. The elements necessary to show that a certain radio or television program is a lottery, gift enterprise, or similar scheme prohibited by a federal statute from being broadcast are (1) the distribution of prizes; (2) according to chance; (3) for a consideration, p. 23.

Radio and television, § 8 — Give-away programs — Lotteries.

4. A giveaway program broadcast over radio or television which calls for the distribution of prizes to home listeners, solicited wholly or in part on the basis of chance, as an award for correctly solving a given problem or answering a question, does not constitute a lottery, gift enterprise, or similar scheme prohibited by a federal statute from being broadcast, p. 25.

APPEARANCES: Roger Wollenberg, of Washington, D. C., argued the cause for appellant; Alfred McCormack, of New York city, argued the cause for appellee in No. 117; Paul W. Williams, of New York city, argued the cause for appellee in No. 118; Max Freund, of New York city, argued the cause for appellee in No. 119.

Mr. Chief Justice WARREN delivered the opinion of the court: These cases are before us on direct appeal from the decision of a 3-judge district court in the southern district of New York, enjoining the Federal Communications Commission from enforcing certain provisions in its rules relating to the broadcasting of so-called "give-away" programs. The question presented is whether the enjoined provisions correctly interpret § 1304 of the United States Criminal Code, formerly § 316 of the Communications Act of 1934. This statute prohibits the broadcasting of ". . . any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance. . . ."[1]

The appellees are national radio and television broadcasting companies. They are, in addition, the operators of radio and television stations licensed by the commission. Each of the appellees broadcasts, over its own and affiliated stations, certain programs popularly known as "give-away" programs. Generally characteristic of this type of program is the distribution of prizes to home listeners, selected wholly or in part on the basis of chance, as an award for correctly solving a given problem or answering a question.[2]

[1] 18 USCA § 1304 (derived from former § 316 of the Communications Act of 1934, 48 Stat 1088, 1089, repealed by 62 Stat 862, 866):

"Whoever broadcasts by means of any radio station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"Each day's broadcasting shall constitute a separate offense."

[2] Examples of the "give-away" programs involved here are "Stop the Music" (American Broadcasting Company), "What's My Name" (National Broadcasting Company), and "Sing It Again" (Columbia Broadcasting System).

"Stop the Music" is described in American's complaint in No. 117 as follows: The home contestants are called on the telephone during the program. On the radio version, home contestants are selected at random from telephone directories. On the television version, home contestants are selected by lot from among those listeners who express in advance, through postcards sent to the network, their desire to participate. On both the radio and television versions, however, the home contestant is not required to be listening to the broadcast at the time he is called in order to participate. When called, the home contestant is asked to give the title of a musical selection that has just been played. In the event he was not listening, or for some other reason desires to have the tune repeated, the master of ceremonies hums or sings it to him over the telephone. If he answers correctly, he receives a merchandise prize; if not, he gets a less valuable "consolation" prize and a member of the studio audience is then given an opportunity to win the merchandise prize by

The rules challenged in this proceeding, §§ 3.192, 3.292, and 3.656 of the commission's rules and regulations, were designed to prevent the broadcast of such programs.[3] The rules are identically worded and apply, respectively, to standard radio broadcasting (AM), FM radio broadcasting, and television broadcasting. Paragraph (a) of each rule provides that "An application for construction permit, license, renewal of license, or any other authorization for the operation of a broadcast station, will not be granted where the applicant proposes to follow or continue to follow a policy or practice of broadcasting . . . ," programs of a sort forbidden by § 1304. Paragraph (b) provides that a program will fall within the ban ". . . if in connection with such program a prize consisting of money or thing of value is awarded to any person whose selection is dependent in whole or in part upon lot or chance, if as a condition of winning or competing for such prize:

"(1) Such winner or winners are required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished, or distributed by a sponsor of a program broadcast on the station in question; or

"(2) Such winner or winners are required to be listening to or viewing the program in question on a radio or television receiver; or

"(3) Such winner or winners are required to answer correctly a question, the answer to which is given on a program broadcast over the station in question or where aid to answering the question correctly is given on a

identifying the same tune. If the home contestant answers correctly, he receives, in addition to the merchandise prize, an opportunity to identify another tune, called the "Mystery Melody." If he identifies this tune, he wins the "iackpot" prize, usually valued at several thousand dollars. Should he fail to identify the "Mystery Melody," another home contestant is called and the process is repeated. Additions to the "jackpot" prize are made each week so long as the "Mystery Melody" remains unidentified.

"What's My Name" is described in National's complaint in No. 118 as follows: Prizes are awarded to contestants for correctly identifying famous persons on the basis of clues given by the master of ceremonies and in a short skit performed by professional actors. All but one of the contestants on the program are chosen from members of the studio audience. The remaining contestant is chosen at random from postcards sent in by listeners, and is called on the telephone during the program. For answering the telephone, he is awarded a watchband manufactured by the sponsor of the program and is also given the opportunity to win a valuable "jackpot" prize in government bonds by identifying the famous person described in the "jackpot" clues. If the home contestant fails to make a correct identification, the amount of the "jackpot" is added to the "jackpot" for the following week's program. The subject of the "jackpot" clues, however, is changed every week.

"Sing It Again" is described in Columbia's complaint in No. 119 as follows: Performers sing a popular song and then repeat it but this time with parody lyrics describing some person, place, or event. Contestants, selected at random from telephone directories, are called by long distance telephone during the program. If the contestant correctly identifies the subject described by the parody lyrics, he wins a merchandise prize and an opportunity to win a "jackpot" prize by identifying the "Phantom Voice," the voice of a famous but unrevealed person. Clues as to the identity of the "Phantom Voice" are given on the program and on other programs broadcast over the same network. The "jackpot" is increased week by week until the correct identification is made. If the home contestant fails to identify the subject of the parody lyrics, he receives a "consolation prize," and a member of the studio audience is given the opportunity to answer and win the merchandise prize.

[3] 47 CFR, 1952 Cum Supp, §§ 3.192, 3.292, 3.656. The language of the rules is broad enough to cover contest programs drawing contestants solely from members of the studio audience. In the court below, however, the commission took the position that such coverage was not intended, and the controversy was delimited to programs involving the distribution of prizes to contestants participating from their homes. American Broadcasting Co. v. United States (DC NY 1953) 110 F Supp 374, 381.

program broadcast over the station in question. For the purposes of this provision the broadcasting of the question to be answered over the radio station on a previous program will be considered as an aid in answering the question correctly; or

"(4) Such winner or winners are required to answer the phone in a prescribed manner or with a prescribed phrase, or are required to write a letter in a prescribed manner or containing a prescribed phrase, if the prescribed manner of answering the phone or writing the letter or the prescribed phrase to be used over the phone or in the letter (or an aid in ascertaining the prescribed phrase or the prescribed manner of answering the phone or writing the letter) is, or has been, broadcast over the station in question."

After promulgation of the rules, the present actions were brought by the appellees.[4] The district court sustained the commission's general authority to adopt such rules, and sustained subdivision (1) of paragraph (b) as a correct interpretation of § 1304. But, with one dissent, the court held that subdivisions (2), (3), and (4) were beyond the scope of § 1304 and hence invalid. The court was of the view that § 1304 applied only to contest programs requiring contestants to contribute a "price" or "thing of value."[5] We noted probable jurisdiction and consolidated the cases for argument.[6]

[1, 2] Like the court below, we have no doubt that the commission, concurrently with the Department of Justice, has power to enforce § 1304. Indeed, the commission would be remiss in its duties if it failed, in the exercise of its licensing authority, to aid in implementing the statute, either by general rule or by individual decisions.[7] But the commission's power in this respect is limited by the scope of the statute. Unless the "give-away" programs involved here are illegal under § 1304, the commission cannot employ the statute to make them so by agency action. Thus, reduced to its

[4] The actions were brought under § 402(a) of the Communications Act of 1934, 48 Stat 1093, 47 USCA § 402(a); 28 USC §§ 1336, 1398, 2284, 2321–2325; and § 10 of the Administrative Procedure Act, 60 Stat 243, 5 USCA 1009. Pub L No. 901, 81st Cong, 2d Sess, 64 Stat 1129, 5 USCA § 1031, has since changed the procedure under § 402(a), but is inapplicable to actions commenced prior to its enactment.

[5] 110 F Supp 374, *supra*.

[6] (1953) 346 US 808, 98 L ed —, 74 S Ct 31.

[7] The commission is authorized by § 4(i) of the Communications Act to "make such rules and regulations, and issue such orders, as may be necessary in the executions of its functions"; by § 303(r) to "Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter"; by § 307(a) and § 309(a) to grant station licenses and license renewals "if public convenience, interest, or necessity" would thereby be served; by § 312 (a) to revoke a license for a violation of any regulation authorized by the act. 48 Stat 1068, 47 USCA § 154(i); 50 Stat 191, 47 USCA § 303(r); 48 Stat 1083, 47 USCA § 307(a); 48 Stat 1085, 47 USCA § 309(a); 48 Stat 1086, 1087, 47 USCA § 312(a). The "public interest, convenience, or necessity" standard for the issuance of licenses would seem to imply a requirement that the applicant be law-abiding. In any event, the standard is sufficiently broad to permit the commission to consider the applicant's past or proposed violation of a federal criminal statute especially designed to bar certain conduct by operators of radio and television stations. And if this consideration is a proper one in individual cases, there is no reason why it may not be stated in advance by the commission in interpretative regulations defining the prohibited conduct with greater clarity. See National Boardcasting Co. v. United States (1943) 319 US 190, 222–224, 49 PUR NS 470, 87 L ed 1344, 1365–1367, 63 S Ct 997; cf. Southern S. S. Co. v. National Labor Relations Board (1942) 316 US 31, 46, 47, 86 L ed 1246, 1258, 1259, 62 S Ct 886.

simplest terms, the issue before us is whether this type of program constitutes a "lottery, gift enterprise, or similar scheme" proscribed by § 1304.

[3] All the parties agree that there are three essential elements of a "lottery, gift enterprise, or similar scheme": (1) the distribution of prizes; (2) according to chance; (3) for a consideration.[8] They also agree that prizes on the programs under review are distributed according to chance, but they fall out on the question of whether the home contestant furnishes the necessary consideration.

The commission contends that there is such consideration; in its brief, it urges that these programs ". . . are nothing but age-old lotteries in a slightly new form. The new form results from the fact that the schemes here are illicit appendages to legitimate advertising. The classic lottery looked to advance cash payments by the participants as the source of profit; the radio give-away looks to the equally material benefits to stations and advertisers from an increased radio audience to be exposed to advertising."

It contends that consideration in the form of money or a thing of value is not essential, and that a commercial benefit to the promoter satisfies the consideration requirement: ". . . Where a scheme of chance is successfully designed to reap profits for its promoter, there will ultimately be consideration flowing from the participants, and it is of no consequence whether such consideration be direct or indirect. In either event, the gambling spirit—the lure of obtaining something for nothing or almost nothing—is exploited for the benefit of the promoter of the scheme." As against this claim the appellees insist that something more is required than just a benefit to the promoter; that the participation of the home audience by merely listening to a broadcast does not constitute the necessary consideration.

Section 1304 itself does not define the type of consideration needed for a "lottery, gift enterprise, or similar scheme." Nor do the postal lottery statutes from which this language was taken.[9] The legislative history of

[8] A typical "lottery" is a scheme in which tickets are sold and prizes are awarded among the ticket holders by lot. See Stone v. Mississippi ex rel. Harris (1880) 101 US 814, 25 L ed 1079. A typical "gift enterprise" differs from this in that it involves the purchase of merchandise or other property; the purchaser receives. in addition to the merchandise or other property, a "free" chance in a drawing. See Horner v. United States (1893) 147 US 449, 37 L ed 237, 13 S Ct 409. But whatever may be the factual differences between a "lottery," a "gift enterprise," and a "similar scheme," the traditional tests of chance, prize, and consideration are applicable to each. We are aware of no decision, federal or state, which has distinguished among them on the basis of their legal elements.

[9] Section 1304 is one of five sections—§ 1301 through § 1305—which constitute "Chapter 61 —Lotteries" of Title 18. Section 1305, added in 1950. exempts certain "fishing contests" from the operation of the other four sections. Section 1301 prohibits the importing or transporting of lottery tickets; § 1302, the mailing of lottery tickets and related matters; § 1303, the participation in lottery schemes by postmasters and postal employees; and § 1304, the broadcasting of lottery information. These four sections use the same terminology—"any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance." This language first appeared in the 1909 amendments to the federal lottery laws. 35 Stat 1129, 1130, 1136. It was adopted verbatim in § 316 of the Communications Act of 1934, which was the first federal statute to ban the broadcasting of lotteries. With only slight modifications not material here, § 316 became § 1304 of the Criminal Code in the 1948 revision of Title 18.

For the early history of lotteries in this country, see Spofford, Lotteries in American History, at p. 171 of 1892 Report of American Historical Association, S Misc Doc No. 57, 52d Cong, 2d Sess.

§ 1304 and the postal statutes is similarily unilluminating.[10]

For guidance, therefore, we must look primarily to American decisions, both judicial and administrative, construing comparable antilottery legislation.

Enforcing such legislation has long been a difficult task. Law enforcement officers, federal and state, have been plagued with as many types of lotteries as the seemingly inexhaustible ingenuity of their promoters could devise in their efforts to circumvent the law. When their scheme reached the courts, the decision, of necessity, usually turned on whether the scheme, on its own peculiar facts, constituted a lottery. So varied have been the techniques used by promoters to conceal the joint factors of prize, chance, and consideration, and so clever have they been in applying these techniques to feigned as well as legitimate business activities, that it has often been difficult to apply the decision of one case to the facts of another.

And so it is here. We find no decisions precisely in point on the facts of the cases before us. The courts have defined consideration in various ways, but so far as we are aware none has ever held that a contestant's listening at home to a radio or television program satisfies the consideration requirement.[11] Some courts—with vigorous protest from others—have held that the requirement is satisfied by a "raffle" scheme giving free chances to persons who go to a store to register in order to participate in the drawing of a prize,[12] and similarly by a "bank night" scheme giving free chances to persons who gather in front of a motion picture theater in order to participate in a drawing held for the primary benefit of the paid patrons of the theater.[13] But such cases differ substantially from the cases before us. To be eligible for a prize on the "give-away" programs involved here, not a single home contestant is required to purchase anything or pay an admission price or leave his home to visit the promoter's place of business; the

[10] See S Rep No. 1620, 80th Cong, 2d Sess (1948); HR Rep No. 304, 80th Cong, 1st Sess, p. A99 (1947); S Rep No. 781, 73d Cong, 2d Sess, p. 8 (1934); HR Rep No. 1850, 73d Cong, 2d Sess (1934); HR Rep No. 1918, 73d Cong, 2d Sess, p. 49 (1934); S Rep No. 564, 72d Cong, 1st Sess, p. 10 (1932); HR Rep No. 221, 72d Cong, 1st Sess, p. 8 (1932); S Rep No. 10, Part 1, 60th Cong, 1st Sess, p. 23 (1909); HR Rep No. 2, Part 1, 60th Cong, 1st Sess, p. 22 (1909).

[11] In the only previous decision on the legality of a "give-away" program of the type involved here, a state trial court held that the program did not constitute a lottery because the consideration element was lacking. Clef, Inc. v. Peoria Broadcasting Co. (Ill Cir Ct 1939) Equity No. 21368.

Similarly, cases under the postal lottery laws (see note 9, *supra*) appear to be uniform in requiring a "valuable" consideration for a "lottery, gift enterprise, or similar scheme." See Garden City Chamber of Commerce v. Wagner (DC NY 1951) 100 F Supp 769, stay den (CA2d 1951) 192 F2d 240; Post Publishing Co. v. Murray (CCA1st 1916) 230 Fed 773, cert den (1916) 241 US 675, 60 L ed 1232, 36 S Ct 725. But cf. dictum in Brooklyn Daily Eagle v. Voorhies (CC NY 1910) 181 Fed 579, 581, 582.

[12] A leading case is Maughs v. Porter (1931) 157 Va 415, 161 SE 242; see also State ex rel. Regez v. Blumer (1940) 236 Wis 129, 294 NW 491. Contra, Cross v. People (1893) 18 Colo 321, 32 Pac 821; cf. Garden City Chamber of Commerce v. Wagner (DC NY 1951) 100 F Supp 769, stay den (CA2d 1951) 192 F2d 240. For critical commentary on the Maughs decision (Va) *supra*, see Notes, 18 Va L Rev 465 and 80 U of Pa L Rev 744; Pickett, Contests and the Lottery Laws, 45 Harv L Rev 1196, 1206.

[13] E. g., Affiliated Enterprises v. Waller (1939) 40 Del 28, 5 A2d 257; Affiliated Enterprises v. Gantz (CCA10th 1936) 86 F2d 597. Contra, e. g., Darlington Theatres v. Coker (1939) 190 SC 282, 2 SE2d 782; Affiliated Enterprises v. Rock-Ola Mfg. Corp. (DC Ill 1937) 23 F Supp 3.

only effort required for participation is listening.[14]

We believe that it would be stretching the statute to the breaking point to give it an interpretation that would make such programs a crime. Particularly is this true when through the years the Post Office Department and the Department of Justice have consistently give the words "lottery, gift enterprise, or similar schemes" a contrary administrative interpretation. Thus the Solicitor of the Post Office Department have repeatedly ruled that the postal lottery laws do not preclude the mailing of circulars advertising the type of "give-away" program here under attack.[15] Similarly, the Attorney General—charged directly with the enforcement of federal criminal laws—has refused to bring criminal action against broadcasters of such programs.[16] And in this very action, it is noteworthy that the Department of Justice has not joined the commission in appealing the decision below.

It is true, as contended by the commission, that these are not criminal cases, but it is a criminal statute that we must interpret. There cannot be one construction for the Federal Communications Commission and another for the Department of Justice. If we should give § 1304 the broad construction urged by the commission, the same construction would likewise apply in criminal cases. We do not believe this construction can be sustained. Not only does it lack support in the decided cases, judicial and administrative, but also it would do violence to the well-established principle that penal statutes are to be construed strictly.

[4] It is apparent that these so-called "give-away" programs have long been a matter of concern to the

[14] Some of the programs involved here (e. g., "Stop the Music," described in note 2, *supra*) do not even make this requirement. As a practical matter, however, few home contestants on a "give-away" program would be in a position to answer correctly the questions asked of them unless they listened to the program.

[15] In 1949 the solicitor ruled that material relating to "Stop the Music" (described in note 2 *supra*) would be mailable. In 1950 he ruled that material relating to a comparable contest conducted on the program "Truth or Consequences" would be mailable. While earlier rulings on a "give-away" program called "Mu$ico" had been to the contrary, the solicitor in 1949 informally advised that the material relating to the program would be mailable. These unreported rulings were made part of the record below.

In accord with these rulings, the solicitor in 1947 had instructed local postmasters that at least "an expenditure of substantial effort or time" was required in order to find an enterprise to be a "lottery, gift enterprise, or similar scheme." The instructions provided:

"In order for a prize scheme to be held in violation of this section, it is necessary to show (in addition to the fact that the prizes are awarded by means of lot or chance) that the 'consideration' involves, for example, the payment of money for the purchases of merchandise, chance, or admission ticket, or as payment on an account, or requires an expenditure of substantial effort or time. *On the other hand, if it is required merely that one's name be registered at a store in order to be eligible for the prize, consideration is not deemed to be present.*" (Italics added.) Postal Bulletin, Feb. 13, 1947. The italicized language, *supra*, was judicial confirmed in Garden City Chamber of Commerce, Inc. v. Wagner (DC NY 1951) 100 F Supp 769, stay den (CA2d 1951) 192 F2d 240. In 1953, on the basis of the Garden City Case and the district court decision in this case, the solicitor issued new instructions further narrowing the meaning of "an expenditure of substantial effort or time." Postal Bulletin, June 4. 1953.

[16] Apparently no prosecutions have ever been instituted under either the former § 316 of the Communications Act or the present § 1304 of the Criminal Code. In a series of letters made part of the record below, the chairman of the commission in 1940 urged the Attorney General to institute criminal proceedings against a number of stations because of their broadcasting of "give-away" programs similar to those involved here. In response to each letter, the Attorney General advised that "careful consideration has been given to this matter and it has been concluded that no action is warranted by this Department."

Federal Communications Commission; that it believes these programs to be the old lottery evil under a new guise, and that they should be struct down as illegal devices appealing to cupidity and the gambling spirit. It unsuccessfully sought to have the Department of Justice take criminal action against them.[17] Likewise, without success, it urged Congress to amend the law to specifically prohibit them.[18] The commission now seeks to accomplish the same result through agency regulations. In doing so, the commission has overstepped the boundaries of interpretation and hence has exceeded its rule-making power. Regardless of the doubts held by the commission and others as to the social value of the programs here under consideration, such administrative expansion of § 1304 does not provide the remedy.[19]

The judgments are
Affirmed.

Mr. Justice Douglas took no part in the decision of these cases.

[17] See note 16, *supra*.

[18] In a letter made part of the record below, the chairman of the commission in 1943 urged the Senate Interstate Commerce Committee to approve a proposed amendment to § 316 of the Communications Act, later to become § 1304 of the Criminal Code. The proposed amendment would have retained the existing language as to "any lottery, gift enterprise, or similar scheme," but would have extended the prohibition to "any program which offers money, prizes, or other gifts to members of the radio audience (as distinguished from the studio audience) selected in whole or in part by lot or chance." No action was ever taken on the proposal.

[19] Cf. United States v. Halseth (1952) 342 US 277, 280, 281, 96 L ed 308, 311, 72 S Ct 275.

MISSOURI PUBLIC SERVICE COMMISSION

Re Laddonia Rural Telephone Company

Case No. 12,695
April 12, 1954

PROCEEDING *to determine whether telephone exchange was being operated as public utility; exchange held to be public utility subject to commission regulation, and service to school ordered.*

Public utilities, § 58 — Telephone company — Unincorporated voluntary association.

1. A telephone company in the form of an unincorporated voluntary association, owned by the individuals using the service, is a public utility subject to commission regulation, despite the avowed purpose of the owners that the company should earn only enough to keep it in operation and provide service, and that it has no intention of earning a profit for the benefit of the holders of the proprietary interest, where such proprietary interest has increased in value over the years and no rule or agreement of the company or owners prevents a profit from being earned and distributed, p. 29.

Service, § 445 — Telephone companies — Direct exchange service by both.

2. Direct exchange service to a community school should be rendered by the two companies servicing the general area, where the residences of the students are evenly divided between the territories of the two companies, p. 30.

APPEARANCES: Latney Barnes, of Mexico, for Laddonia Telephone Company; R. W. Hedrick, Sr., of Jefferson City, for F & M Telephone Company; Louis W. Cowan, for the commission.

By the COMMISSION: This cause first came before this commission as a result of an order of this commission issued September 17, 1953, in this case pursuant to which an investigation was commenced to determine if the Laddonia Rural Telephone Company is being operated as a public utility subject to regulation by this commission. After due notice of the hearing had been given to all parties deemed by the commission to have an interest therein, the matter was heard before one of our commissioners on November 30, 1953, in the commission's hearing room in Jefferson City, Missouri. At the conclusion of the proceedings held November 30, 1953, the cause was continued to February 2, 1954, at which time additional proceedings were had and the cause submitted on the record. The appearances at both hearings were as noted above.

Findings of Fact

The Laddonia Rural Telephone Company is an unincorporated voluntary association of farmers and residents living in Laddonia, Missouri, and the surrounding community. Laddonia is located on U. S. Highway No. 54 some 20 miles by road northeast of Mexico. Also, it is 9 miles southwest of Vandalia, and 13 miles south of Perry. This telephone association has furnished telephone service in the community for a great many years, i.e., from the commencing of regulation in 1913 up to some time in 1953. At some time in 1953, the accounting and engineering staff of this commission informed the officer of the association that in their opinion it was not a public utility subject to regulation by this commission. As a consequence of that information, the Laddonia Company discontinued its relationship with this commission and purported to operate as an exempt nonprofit telephone company, and changed its rates for telephone service without obtaining any authority from this commission.

Subsequent to the time the Laddonia Company began to consider itself exempt from regulation, the F & M Telephone Company, located at Martinsburg, Missouri, filed an exchange area map with this commission which in some particulars seems to overlap the territory claimed by the Laddonia Telephone Company. The issues before this commission, therefore, are whether or not the Laddonia Telephone Company is a public utility subject to regulation by this commission, and if so, what disposition should be made of the dispute with respect to boundary lines of the Laddonia Company and the F & M Telephone Company.

Laddonia lies upon U. S. Highway

No. 54 which connects it with the city of Mexico. The highway as it leaves Mexico runs to the east for approximately 13 miles at which point it turns to the north for 5 miles until it reaches Laddonia. The point at which it turns is known as Scott's Corner, and it is in this area where the boundary line dispute lies. In recent years, a rural consolidated school district's building was located at this point and the school district has requested service from both the F & M Telephone Company and the Laddonia Company. One reason for this request is the fact that a large number of the students of the school live in the exchange areas of the two companies. This is emphasized by the fact that the school building is located almost on the line dividing the two exchange areas. The Laddonia Company claims that it is entitled to serve the school as a public utility by reason of the fact that it has purported to serve Scott's Corner since the company was organized. The F & M Company asserts that it is entitled to serve the school to the exclusion of the Laddonia Company for the reason that it is a recognized public utility and has on file with this commission an approved exchange area map which encompasses the area in which the school building is located. It contends that because it is a regulated public utility, it not only has a duty to serve the school but it has a right to serve it to the exclusion of the others.

Turning first to the issue of whether or not the Laddonia Rural Telephone Company is a public utility, it is noted that there are 187 shares of stock, i.e., 187 different property interests, in the organization held by 158 different individuals. Except for thirteen persons who own 2 shares each and one who owns 3 shares, the remaining stock is owned by persons holding only one share each. These evidences of property interest were issued in 1904, and in virtually all, if not all, instances the transfers thereof resulted from the sale of a farm served by a telephone of the company, the farm owner being a customer and stockholder of the company. When the farm was sold, the interest in the Laddonia Company was regarded as going with the land, and those persons holding more than one share acquired the multiple shares by purchasing additional land, such land having a farm house formerly occupied by a shareholder of the company. In addition to the so-called shareholders, the company serves many other persons for hire who have no proprietary interest whatever in it. It has 228 customers in Laddonia, 123 of which receive common battery service and 105 of which receive magneto service. It has 191 customers in rural territory, making a total of 419 customers.

The responsibility of conducting the company's affairs rests with an elective group designated as a board of directors. This board is elected by the shareholders, and only shareholders have voting rights. The board employs various individuals to perform the services and labor necessary to the operation of the company.

Although the ownership of the company lies in the hands of various individuals, no dividends have ever been paid, and all money received in excess of expenses has been returned to the plant in the form of improvements and extensions. However, there are apparently no restrictions on the organi-

zation or the board of directors which would prevent the declaring the dividends or similar action. The only differential in rates between customers receiving the same class of service is a discount given those customers owning their own instruments. Shareholders and nonshareholders pay the same rates for similar classes of service.

When originally constructed, the system of the Laddonia Company extended south from the town of Laddonia to the point previously described as Scott's Corner and the present location of the Community School District's building. The system served a farmhouse located at the Corner and one located about one-half mile to the north. It also served some two or three subscribers about one mile north and west of the Corner. Likewise, it served one customer to the northeast of the Corner. Some ten or twelve years ago, the house located at the Corner and the one about one-half mile to the north were dismantled and, of course, telephone service discontinued. However, the company since that time has maintained a live trunk line the entire distance from Laddonia to Scott's Corner.

The exchange area map of the F & M Telephone Company now on file and approved by this commission defines its north boundary as being located about one-half mile north of Scott's Corner. This boundary turns to the north about one mile west of the Corner and runs to the north for about one-half mile. At this point it again turns to the west for a distance of approximately 2 miles. Except for the customer at Scott's Corner and along U. S. Highway No. 54 to the north thereof, there is no conflict between the two companies as to the territory claimed.

Conclusions

[1] After having carefully considered the evidence in this cause, we are of the opinion and find that the Laddonia Telephone Company is a public utility subject to regulation by this commission under provisions of the Public Service Commission Act. Although it is the avowed purpose of the owners that the company shall earn only enough to keep it in operation and provide service and that it has no intention of earning a profit for the benefit of the holders of the proprietary interest, there is no question that the value of the system has increased from time to time and that such value is reflected in the proprietorship of the various owners. Likewise, there is no rule or regulation, or agreement of the company or its owners, which prevents it from earning a profit and distributing such earnings to its owners. For these reasons, it is our opinion that the Laddonia Company should immediately submit to this commission for its approval a schedule of rates and rules and regulations governing the performance of service. Likewise, it is our opinion that the company should prepare and file an exchange area map defining the territory which it purports to serve, such exchange area map to conform to our views hereinafter expressed.

Turning now to the problem of locating the boundaries of the exchange areas of each of the companies here concerned, it is our opinion that the north boundary of the F & M Telephone Company is properly located.

It has been a long period of time since the Laddonia Telephone Company has actually served anyone residing in the area claimed by the F & M Telephone Company. We shall, therefore, order the Laddonia Company to locate the southern boundary of its exchange area in such a manner that it will coincide with the northern boundary of the F & M Company.

[2] With respect to the rendering of telephone service to the Community School located at Scott's Corner, it is our opinion that service should be performed by both companies. We recognize that in the ordinary situation it is not good utility regulation for one utility to be permitted to invade the service territory of another utility; that in the usual case a company authorized to furnish service in a given area should be permitted to do so to the exclusion of the others. However, in this instance, we have an unusual situation. Telephone service furnished a school attended by many children provides a convenience and means of communication largely for the parents and the students themselves. In the instant case, more than one-half of the students live in the territory served by the Laddonia Company. Even if the service through the Martinsburg exchange of the F & M Company were furnished at no cost to the persons living in the Laddonia Company's service area, we believe that a more satisfactory arrangement will result if service is supplied directly through the exchange in Laddonia. Therefore, because of the nature of the use being made of the telephone service and the unusual situation with respect to the location of the school district to the two telephone companies, we shall authorize the Laddonia Telephone Company to provide exchange service to the school at Scott's Corner. At the same time, it is our opinion and we find that the F & M Company should also provide telephone service to the school for the benefit of persons residing in its exchange area. Service, of course, should be rendered in each instance under the rates and rules and regulations approved by the commission for that type of service.

Entertaining these views, it is, therefore,

Ordered: 1. That the Laddonia Rural Telephone Company shall within thirty days from the effective date of this report and order file with this commission a schedule of rates for telephone service furnished through its telephone exchange at Laddonia, Missouri, such schedule of rates to include rules and regulations governing the furnishing of such service and, also, a service area map defining the territory served by said company.

Ordered: 2. That the south boundary of the service area of the Laddonia Rural Telephone Company shall coincide with the north boundary of the service area of the F & M Telephone Company, such service area being described in the service area map of the F & M Telephone Company on file with and approved by this commission.

Ordered: 3. That the Laddonia Rural Telephone Company and the F & M Telephone Company each shall provide direct exchange telephone service to the building of the Community School District R-VI of Audrain county, Missouri, such service to be furnished at the request of the board of directors of such school

district and at the applicable rates as approved by this commission.

Ordered: 4. That this order shall be effective on April 20, 1954; that the secretary of the commission shall serve certified copies of same on all interested parties; and that the Laddonia Rural Telephone Company and F & M Telephone Company shall notify this commission in writing in the manner prescribed by § 386.490, RSMo. 1949, whether the terms of this order are accepted and will be obeyed.

MISSOURI PUBLIC SERVICE COMMISSION

Re Union Electric Company of Missouri

Case No. 12,651
May 19, 1954

APPLICATION *by electric company for authority to acquire remaining stock of another electric corporation; approved.*

Consolidation, merger, and sale, § 25 — Acquisition of minority interest.
An electric company, in order to eliminate the problems arising from the continuance of a minority interest, should be authorized to acquire the remaining common stock of another electric corporation upon terms approved by its directors where the corporation has already acquired, with commission approval, the majority of the other company's stock.

By the COMMISSION: By its orders issued herein on September 29 and November 2, 1953, the commission authorized Union Electric Company of Missouri (herein sometimes referred to as Union Electric) to acquire, take, and hold the 125,000 outstanding shares of common stock of Missouri Edison Company or such number thereof, not less than 85 per cent of the total number of shares outstanding, as may be deposited under an amended plan of reorganization heretofore filed in this proceeding, and to issue and deliver in exchange therefor not exceeding 87,500 additional shares of common stock of $10 par value of Union Electric.

On April 10, 1954, Union Electric filed with this commission its second supplemental application wherein it showed that, as a result of such exchange, Union Electric had acquired 124,488 shares or 99.6 per cent of the 125,000 outstanding shares of common stock of Missouri Edison Company, and had issued therefor 87,143 shares of Union Electric common stock of $10 par value, and that there remained in the hands of fourteen stockholders only 512 shares of the common stock of Missouri Edison

Company. In said supplemental application, Union Electric requests authority to acquire such remaining shares from time to time upon such terms as may be approved by its board of directors.

A hearing on the second supplemental application was held in the offices of the commission in Jefferson City, Missouri, on May 5, 1954. Union Electric appeared by counsel and the commission was represented by a member of its staff.

The commission is aware that certain problems arise from the continuing existence of a minority interest, even though small, in a public utility company, the majority of the common stock of which is acquired by another public utility, and is of the opinion that in a case such as is here involved it is in the public interest for the acquiring company to own all of the common stock of the subsidiary, if the remaining shares can be acquired on reasonable terms. The commission is further of the opinion that, in view of the small number of shares of Missouri Edison Company common stock remaining in the hands of only fourteenholders, it is appropriate that the method and terms of such acquisition be determined by the board of directors of the acquiring company. However, in order that we may be kept informed concerning such acquisition, we will require the filing of periodic reports with respect thereto.

It is, therefore,

Ordered: 1. That Union Electric Company of Missouri be and hereby is authorized, from time to time, to acquire, take, and hold the 512 shares of common stock of Missouri Edison Company remaining in the hands of stockholders, other than Union Electric Company of Missouri, upon such terms as may, from time to time, be approved by the board of directors of Union Electric Company of Missouri.

Ordered: 2. That nothing in this order shall be considered as a finding by the commission of the value for rate-making purposes of the properties herein involved, nor as an acquiescence in the value placed on said properties by the parties.

Ordered: 3. That Union Electric Company of Missouri shall, on or before June 30, 1954, and on or before the last day of each 3-month period thereafter, make a verified report to the commission stating the number of shares of common stock of Missouri Edison Company acquired during the period covered by such report, the terms and conditions of such acquisitions, and the price or prices paid therefor.

Ordered: 4. That this order shall take effect on this date and that the secretary of the commission shall forthwith serve on all parties interested herein a certified copy of this order.

Colonel Byllesby didn't know he was a pioneer . . . . .

It was before the turn of the century that young Henry Byllesby worked side by side with Tom Edison and George Westinghouse. As they each contributed their great knowledge to design the first steam operated electric central station in the world, the farthest thought from Henry Byllesby's mind was that someday he and Tom and George would be regarded as pioneers in electric power. It was therefore more than coincidence that the company he founded in 1902 should later be aptly named, Pioneer Service and Engineering. This is but a tribute to the vision of a man who, with his company, contributed to making America the most powerful nation on earth. This year Pioneer takes pride in celebrating LIGHT'S DIAMOND JUBILEE and pauses a moment to respect the name of its founder *. . . who didn't know he was to be a pioneer.*

52 YEARS

Serving power plant needs of utilities and private industries.

Pioneer Service & Engineering Co. 231 SOUTH LASALLE ST. CHICAGO 4, ILL.

Industrial Progress

Utilities Publicize Area Advantages for Industries

Utilities in various sections of the untry—especially Electric and Gas mpanies which serve areas beyond han centers—are active in promot- community development. This is tably evident in national publicity, several utilities, which lists the ad- ntages available to industries con- lering a new location, and offers actical assistance in selecting fac- y sites.

While this kind of publicity by lities is not new, it has been opted, in the last year or two, by ny more companies than hereto- re. Among the utilities which pio- ered in the use of newspapers and tional magazines to publicize their as are—Cleveland Electric Illumi- ting Company, with the slogan est Location in the Nation"; Com- onwealth Edison Company, telling Chicago and Northern Illinois, and nited Gas Corporation, advertising Gulf South.

During recent months there have peared in metropolitan newspapers national circulation, numerous lity company advertisements fea- ing industrial opportunities in their as. Among those noted—and there y well have been others which caped notice—the ones mentioned low will serve to illustrate the vari- s types of publicity in use.

American Gas and Electric Com- ny — *"How to explore 90,000 uare miles of plant-site advantages 10 minutes,"* appears in large type the top of a full page advertisement. e lower half of the page is divided o 14 boxes, each devoted to some ecial factor of plant location. The st, "Access to Markets," notes that "AGE System runs through the art of industrial America—serving portant manufacturing and popu- lation centers in Michigan, Indiana, Ohio, Kentucky, West Virginia, Virginia, Tennessee." Among others are Power, Labor, Transportation, Minerals, Water, Living Conditions, and Reasonable Tax Rates. Under each heading is brief explanatory text, with space to check if it is "important." In each box is an eye-catching illustration, applicable to the subject. A special box is devoted to a "Memo to Executives of Expanding Industries," from the manager of the area development division of the company—with the New York address and telephone number—inviting inquiries. This advertisement, well displayed with plenty of white space, is extremely effective in presenting the AGE "area of industrial opportunity."

Consumers Power Company—In a quarter-page advertisement, one reads "Here in Outstate Michigan you will find *The Site of Sites* for Chemical and Allied Industry Plants." A map of the state indicates this utility's service area, and the principal cities where sites are available. The body of the main text states: "One of the world's great chemical companies developed from a single brine well at Midland, Michigan. Another outstanding chemical company, attracted by Outstate Michigan's vast underground salt beds and the availability of water transportation, is completing a large plant at Montague, Michigan. Other prosperous chemical companies are to be found in many Michigan communities. There are plenty of good sites left, some of them (but by no means all), in the cities indicated on the map. And remember, Michigan has the greatest fresh water supply in the world—water for industry, water for transportation, water for recreation—plus an ideal location in the very heart of America." Those seeking information are directed to inquire of the utility's Industrial Development Department, Jackson, Michigan. This advertisement is one of a series about Outstate Michigan, published by Consumers Power Company during several months past.

Duquesne Light Company —At the top of a large advertisement are pictured "three of Pittsburgh's newest buildings in the 'Gateway Center' —a part of the tremendous $2½ billion expansion and development program in progress. These buildings were erected by the Equitable Life Assurance Society and are located near Pittsburgh's historic Point, where the Allegheny and Monongahela Rivers join to form the Ohio River." Below a display head—"The new PITTSBURGH, *A Clean City with a Bright Future*"—the main text states: "Pittsburgh, long noted as one of the country's great industrial cities, is now being recognized as one of the cleanest metropolitan areas to be found anywhere . . . Your business or industry can enjoy the advantages offered by clean Pittsburgh —for it has a great deal to offer, in addition to a bright, healthful atmosphere. There is a large pool of both male and female labor available. It is an excellent source of supply for countless raw materials and finished products. And excellent transportation facilities are at hand. Duquesne Light Company's quarter billion dollar expansion program since the war assures industry, business, and home owners an adequate supply of electric power for today and tomorrow." Inquirers are directed to the Utility's Area Development Department, Pittsburgh, Pa.

Florida Power & Light Company —In a large display advertisement this utility publicized an overwhelming vote granting it a new Electric

(*Continued on page* 28)

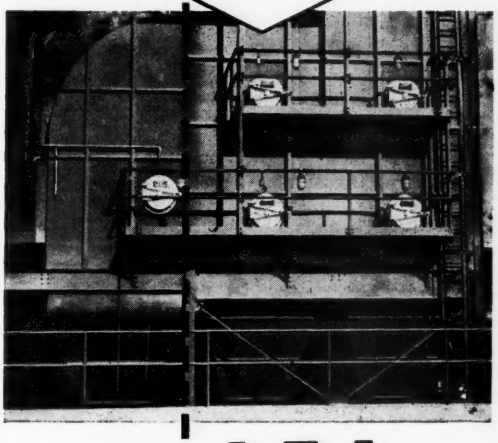
franchise in Miami, as "proof th sound private enterprise is favor by all elements" in its area. T *"85% Landslide"* support by groups on the franchise vote is r vealed in convincing statements und these four headings: "Organzied L bor," "Municipal Government "Business Leaders," and "Publ Opinion." Then, the advantages a opportunities for industries, to found in the utility's area, are w presented in telling comments, und these boxed headings: "Fast Gro ing Markets of High Buying-Power "Taxes Are Favorable . . . Gover ment Friendly;" "High Health Leve Increase Productivity;" "Content Workers Have High Morale," a "Cheap, Dependable Electric Power At the close, it says *"We'll Glad Help"*—followed by this statemen "Florida's full advantages for reloc tion or entirely new ventures can fully realized only through extensi on-the-ground study. If you are i terested, we will advise you as to t area we serve, assist in securing i formation from local sources a help you, in other ways, get comfor ably located. Address your inqui to Industrial Development Servic Miami 32, Fla."

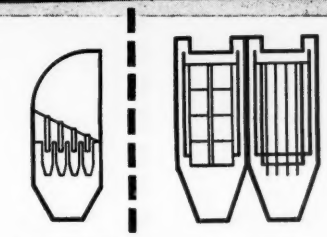
General Public Utilities Corporation—This utility uses a quarte page space to call attention, in a seri of advertisements, to *"GPU Site-Service."* At the top of one of the messages, one reads, "Shop for a ne industrial location on a 3c stamp Alongside those words, and surroun ed by white space, is pictured a chee ful looking man riding across t countryside on a *magic-carpet* whi could be a 3c stamp. Then follo this brief, well phrased text: "Wri GPU *Site-Service* for detailed info mation on selected sites and buildin in this 24,000 square mile area. GP *Site-Service* helps you get down t facts—*fast!* One letter listing yo requirements brings facts on car fully selected sites in the GPU are You receive pictures, plans and spec fications as well as a detailed repo on transportation, water, utilities a other services. Let *Site-Service* sho you the 'sites' in GPU Pennsylvan and New Jersey. It's an area ma up of hundreds of small towns a cities within overnight shipping one-third the nation's populatio Write in confidence." At the botto is a map, affording a bird's-eye vie of the area served by GPU's five ele tric company subsidiaries in Penns vania and New Jersey, with the pri

(*Continued on page* 30)

The Western Precipitation CMP Unit

...its advantages to PUBLIC UTILITIES





MULTICLONE SECTION

COTTRELL SECTION

Inasmuch as most public utility power generating plants are located in or adjacent to metropolitan areas, the control and recovery of fly ash from stack gases is a particularly important problem. To assist power plants in solving this problem Western Precipitation pioneered, almost a half century ago, the first commercial application of the now-famous Cottrell Electrical Precipitator—and this type of equipment is still universally recognized as outstanding in its field.

Some years later, Western Precipitation also pioneered the first small tube *mechanical* recovery equipment—the Multiclone Collector—to provide high recovery efficiency at low installation cost.

And as a result of these years of firsthand experience in *both* electrical and mechanical recovery methods, Western Precipitation subsequently introduced the CMP unit—fly ash recovery equipment that combines in *one* integrated unit the advantages of both electrical and mechanical recovery principles.

- **The CMP first passes the stack gases through a Multiclone section where the heavier fly ash particles are *mechanically* removed.**
- **Then the partially-cleaned gases pass through a Cottrell section where the very fine fly ash particles are *electrically* recovered.**

RESULT—by using a Multiclone section to remove all but the finest particles, the bulk of the recovery operation is performed with relatively low-cost equipment. And using a Cottrell for final clean-up insures unusually high recovery efficiency—approaching theoretically perfect, if desired. Thus, very high recovery efficiency is obtained at low installed cost.

With CMP equipment, even small utility companies can afford adequate fly ash recovery installations. But, large or small, the vital factor in making an efficient CMP installation is obtaining the proper balance between the mechanical and electrical sections to fit the particular requirements of *each individual* application.

This requires actual field experience—and no other organization can equal Western Precipitation's years of first-hand experience in *both* mechanical and electrical recovery methods . . . your assurance of maximum satisfaction when you bring your fly ash problems to this long-established organization.

Write for full details on Western Precipitation CMP equipment—or contact our office nearest you.

Western Precipitation Corporation

DESIGNERS AND MANUFACTURERS OF EQUIPMENT FOR COLLECTION OF SUSPENDED MATERIALS FROM GASES & LIQUIDS

Main Offices: **1064 WEST NINTH STREET, LOS ANGELES 15, CALIFORNIA**

Chrysler Bldg., New York 17 • 1 N. La Salle St. Bldg., Chicago 2 • 1429 Peachtree St. N.E., Atlanta
Hobart Bldg., San Francisco 4 • Precipitation Co. of Canada, Ltd., Dominion Sq. Bldg., Montreal

cipal cities indicated. A free brochure with detailed map is offered, and the corporation's office address and telephone number in New York City are noted.

The subsidiaries are listed as Jersey Central Power & Light Company, Metropolitan Edison Company, New Jersey Power & Light Company, Northern Pennsylvania Power Company, and Pennsylvania Electric Company.

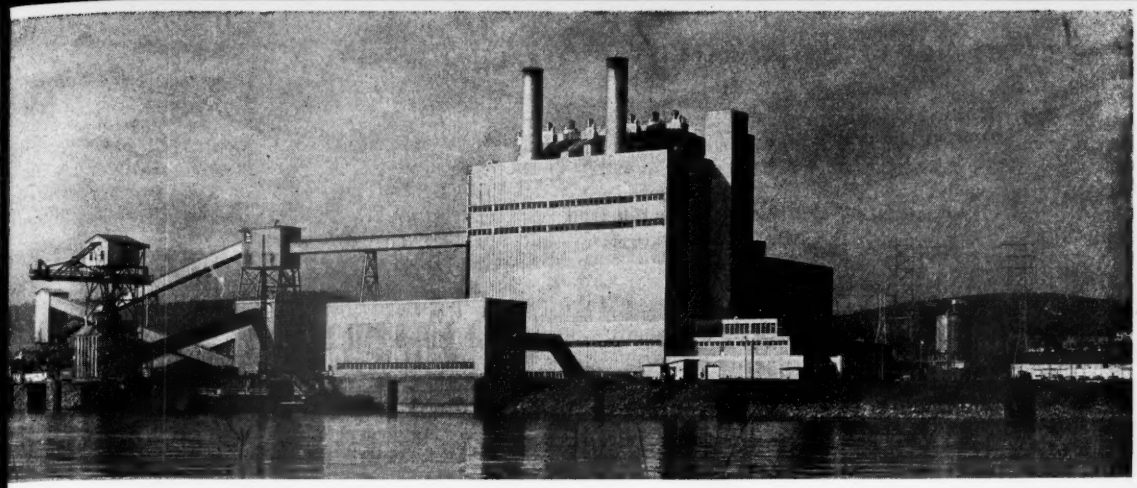
Middle South Utilities System—A series of advertisements, sponsored by the four operating subsidiaries of this utility system, appear from time to time. They feature the various factors which contribute to industrial progress in that section. As a sample of this publicity, one advertisement bore this heading—"American Industry Chooses *the Middle South.*" The main text states—"Easy accessibility to the market places of the world and rapidly expanding regional and national markets have attracted such leading companies as Talon, Inc., Chase Bag Company, Sherwood Refining Company, Inc., and many others to the states of industrial potential — Arkansas, Louisiana and Mississippi—the Middle South. Since 1939 imports and exports have increased 463% at New Orleans, the nation's second port. Yes, business is expanding in the Middle South and there is room for more. The climate is mild, people are friendly, healthy and cooperative, and industry has found plenty of productive workers in the Middle South. Look into *your* future in *The Middle South!*" Cleverly executed illustrations surround this text, picturing products of the three firms mentioned. Identifying tags are attached to the illustrations. Each tag bears the words, "Made in the Middle South by"—one tag for "Talon" zipper; another for "Chase Bag Company" and the third for "Sherwood Refining Company, Inc." At the bottom, one is directed, for further information, to write—The Middle South Area Office, 211 International Trade Mart, New Orleans, Louisiana or any of these business-managed, tax-paying electric and gas service companies: Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service Inc.

New England Electric System—*"Meet New England"* is the invitation which this utility extends in advertisements citing factual information about its service area. A recent one was topped by a map showing communities in mid-Massachusetts, and below it the words, "For Sale: Big Brains." The text which followed presented this brief but significant comment—"High wage, romance industries are moving into Worcester County and other mid-Massachusetts communities like an endless caravan. For New England has become the oasis of industrial brain power what with 123 colleges and universities, 350 research laboratories, 456 hospitals, supplying an unparalleled flow of management material and scientists. Result: since 1939, a million new jobs and a million more people in Yankeeland. Plastics, electronics, metalworking — any business that thrives on skilled labor and day-to-day research finds New England attractive." Under a second *"Meet New England"* head is pictured a new and modern electric generating plant, with this statement—"Grand Scale Fortune-Telling. Meeting the power needs of the most highly industrialized region in the nation takes a lot of planning and peering into the future. New England Electric System's 150,000 kilowatt Salem Harbor Station is a good example of predicting tomorrow's needs. The newest to join the System's network of 24 hydro stations and 12 steam plants, Salem now works around the clock to supply the area with electricity. New England's regional economy still moves forward at a surprising rate —since 1939 the number of manufacturers is up 50%, number of factory workers up 31%, value of manufacture up 250%." At the bottom is this utility's name, in the form of a seal, with the words—"New England's largest Electric system—serving 2,300,000 people in 232 New England communities—and 3800 industrial and manufacturing firms." And, at one side, in a box, one reads—"New England's Industry has the New Look. Let us help you in your plans to locate here. Facts on available plants and development potential in thriving New England communities are confidentially yours. Write New England Electric System, 441 Stuart Street, Boston, Mass."

Philadelphia Electric Company—A recent quarter-page advertisement states, *"Opportunity grows where independence began."* An attractive illustration presents an aerial view, with the caption, "The Mall, now under construction, extending north from Independence Hall, i Philadelphia, reveals this histori building in all its glory." Below th picture, the text states—"The great est industrial news of our time is be ing made in dynamic Delaware Val ley, which offers unlimited oppor tunities to commerce and industry. I you are planning expansion or relo cation of your business, consider th advantages of this area. You will fin a magnificent seaport, unequalled ra and highway facilities, and a great in ternational airport. Other assets in clude versatile and skilled workers raw materials, a market of 20 millio persons within 100 miles . . . and a abundant supply of electric power now and for the future. It's sound business to 'set your site' in Greate Philadelphia, the heart of Delawar Valley."

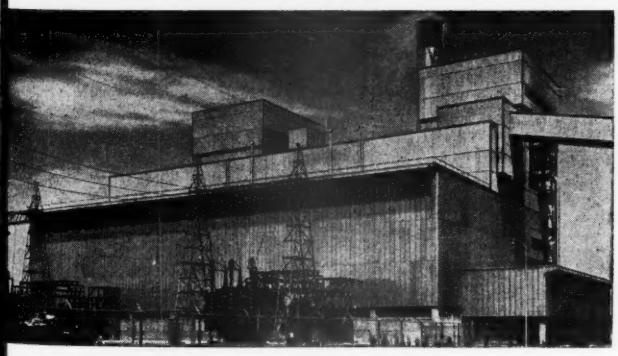
Public Service Electric and Gas Company—This utility, serving th great manufacturing area of New Jer sey—extending across the state from the Hudson River on the East to Trenton and Camden on the Dela ware River at the West—has long been an advertiser of the availability of desirable industrial sites in its serv ice area. Its quarter-page advertise ments have appeared at frequent in tervals in New York City newspa pers, reaching a nationwide audience They usually feature an illustration of the cover of a booklet, which i titled, *"Take A Look At New Jersey . . . The Cross Roads of the East."* The make-up of the advertisement permits ample white space. The story in each one of the continuing series points up some special phase of th plant-site scene. Appropriate illustrations tie in with the text, which in turn, is related to the theme of th booklet mentioned. One advertise ment, for instance, states at the top "... one of the briefest analytical portrayals . . . imaginable." Directly be low those words is pictured the *Take A Look At New Jersey* booklet, and then this text: "An industrialist who is searching for a site for a new plant made the above statement after he had finished reading the new booklet about New Jersey, the Crossroads of the East." Then this comment—"Written in terse, factual terms, and containing all the basic information which industrialists require when they are making inquiries concerning plant sites, this brochure is of in terest to any manufacturer who is considering the establishment of a

(*Continued on page* 32)



Why fine new power plants everywhere have Q-Panel Walls

Builders of new power plants in all parts of the country have specified Q-Panel walls for the following very good reasons: 1. Q-Panels are permanent, dry and noncombustible, yet may be demounted and re-erected elsewhere to keep pace with expansion programs. 2. Q-Panels are light in weight, thus reducing the cost of framing and foundations. 3. Q-Panels have high insulation value . . . superior to a 12″ masonry wall. 4. Q-Panels are quickly installed because they are hung, not piled up. An acre of wall has been hung in 3 days. For more good reasons for using Q-Panel construction, use the coupon below and write for literature.



Robertson

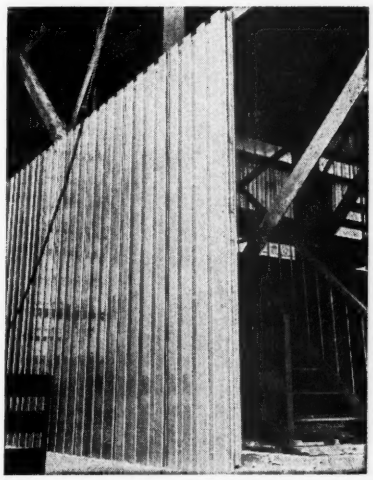
Q-Panels

H. H. Robertson Company

2400 FARMERS BANK BLDG. • PITTSBURGH 22, PA.

Offices in Principal Cities

Q-Panel walls grace the new Elrama Power Plant (above) near Pittsburgh. It was designed by Duquesne Light Company's Engineering and Construction Department. The Dravo Corporation was General Contractor.



Q-Panel walls (above) go up quickly in any weather because they are dry and hung in place, not piled up.

More than 32,000 sq. ft. of Q-Panels were used to enclose the impressive Hawthorn Steam Electric Station (left) of the Kansas City, Missouri, Power and Light Company. Ebasco Services, Inc., designed and built the plant.

Please send a free copy of your Q-Panel Catalog.

NAME

FIRM

ADDRESS

PUF1

plant along the Atlantic Seaboard. We will be happy to mail you a copy of this analytical publication, so that you will have all the information about the advantages which New Jersey gives to all types of industry. Write Public Service Electric and Gas Company, 64 Park Place, Newark 1, N. J."

Utah Power & Light Company—In a large advertisement, the upper half pictures an open chest—the contents overflowing—and one is advised to "Take a good look at the TREASURE CHEST in the GROWING WEST." The contents revealed are *not* Spanish Doubloons, but the natural resources and products essential to industry. The main text then states: "The vast Utah, Idaho, Wyoming and Colorado area served by the Utah Power & Light Company is truly a 'Treasure Chest' in the Growing West. To industry it offers tremendous opportunity, for all the necessary elements are present, including:

- Every major basic raw material.
- 60% of USA phosphate reserves.
- 214 different minerals.
- One-third of nation's copper.
- Largest proved uranium reserves in nation.
- Greatest concentration of nonferrous metal mills, smelters, refineries in USA.
- Largest steel mill west of Mississippi.
- Low-cost power, water, fuel.
- Intelligent and stable labor force.
- Sound diversified economy.
- Healthful climate with low humidity.
- A gateway to the rich, far west market where America is growing fastest.
- Plus . . . plenty of elbow room."

And, the reader is invited to "Write, wire or telephone for Area Resources Brochure *'A Treasure Chest in the Growing West.'* Inquiries held in strict confidence. Address: W. A. Huckins, Manager, Business Development Department. Utah Power & Light Company, Salt Lake City 10, Utah."

Virginia Electric and Power Company—In the upper half of an advertisement, beside a picture of the striking shaft at Kitty Hawk to the memory of the Wright Brothers, one reads—*"Your Industrial Future . . . in a land of beginnings—Northeastern North Carolina."* Then, the lower half presents this text—"Here, on Roanoke Island, the *first* English Settlement was set up in 1585. Here, was born Virginia Dare—the *first* white child in the New World. Here, at Kitty Hawk, the Wright Brothers made their *first* successful power flights. Here, in a land of Beginnings—at 'The Top Of The South'—can be your industrial future. Here, is a location for your industry—large or small—and a plentiful supply of low-cost, dependable Electricity. In Northeastern North Carolina, at the 'Top of the South,' the people are really friendly to new and expanded industry for, with traditions going back to Colonial days, they know that more invested capital means greater opportunities for workers who realize what free American enterprise can do. Our Area Development Department can help you find the location you want for your industry. We have the information on sites, natural advantages and technical details. A letter, postal card or telephone call will start this confidential service to you." And, under the utility's signature, at the bottom, is its address, "Richmond 9, Virginia."

West Penn Electric System—In a series of advertisements, a typical heading reads, "Every Plant Location Should Have All 7* For Efficient Operation." And below, under an asterisk * is this "All 7" list—

1. Major Markets
2. Room to Grow
3. Good Workers
4. Natural Resources
5. Materials
6. Shipping Facilities
7. Electric Power

Under the top heading is an illustration—with the title, "Shop in an industrial supermarket"—picturing a man with a shopper's basket filled with various articles, with such labels as—"steel, ceramics, chemicals, coal, natural gas, glass, wire, plastics," etc. And, the main text states—"How far must you go for the supplies that keep your production lines rolling? Distance can mean delays—and dollars out of your pocket. Stockpiling can be expensive, too. The ideal situation for any manufacturer is to be able to buy everything he needs—as he needs it—'right in his own backyard.' Producers of a great variety of equipment, component parts, special steels, coal and petro-chemicals, and semi-finished materials and supplies of all kinds, are located in the area served by the West Penn Electric system in the five states of Maryland, Pennsylvania, West Virginia, Ohio and Virginia. That's one reason why you should consider this area when it's important to cut costs. Yo won't have to 'shop around' for th materials you need." The reader i then invited to—"Send for free fold er *'7 Good Business Reasons'* de scribing advantages enjoyed by busi ness and industry in the West Pen Electric service area. Let us recom mend communities and plant sites t meet your specifications, in confidenc if you wish. Write or phone: Are Development Department. The We Penn Electric Company, Room 90 50 Broad Street. New York 4, Ne York. Whitehall 4-3740." At the bo tom, under this utility system's signa ture, appear the names of its sub sidiaries: Monongahela Power Com pany, The Potomac Edison Company and West Penn Power Company.

These samples of "plant-site" ad vertisements—published by utilit companies operating in many dif ferent sections of the country—pre sent practical evidence of a wide spread recognition of the desirabil ty of promoting community growt and development.

An alertness on the part of utilit managements, to search out and pub licize specific advantages and oppor tunities—available in their servic areas—is readily seen in the origina and individual presentations in thes newspaper advertisements.

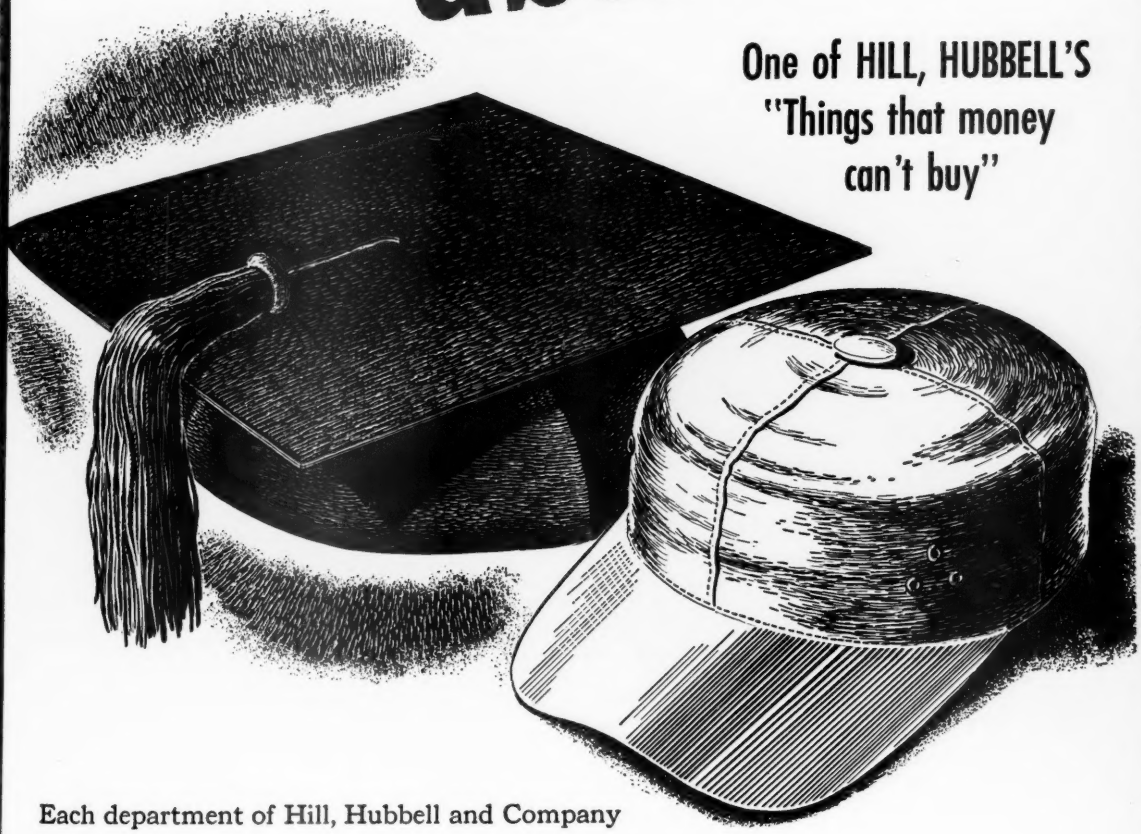
This special type of publicity inti mately identifies a utility company a an active working partner in contrib uting to the progress of the communi ties where it does business. It woul appear that—when publicity of thi kind is carefully planned and skil fully executed—it not ony provides practical means to aid in area develop ment, but also to foster good publi relations.

Of timely interest, on this subject is a brochure—"What New Indus trial Jobs Mean to a Community"— recently issued by the Chamber o Commerce of the United States. Th introduction makes this pertinen comment—"When a new manufac turing plant goes up, there is a ne addition to income flow in the loca community. The new payroll dollar roll into the cash registers of the loca merchants, into the coffers of the lo cal banks, and the local economy ex periences expansion. Furthermore this economic expansion is reflecte usually in general community growt with increases in population, schoo enrollment, and all the rest.

Copies of the brochure may be ob tained from the Chamber of Com merce, Washington 6, D. C.

two-way abilities

One of HILL, HUBBELL'S "Things that money can't buy"



Each department of Hill, Hubbell and Company is manned by experts who have been soundly trained academically—but who have proved their "book learning" by years of tireless practical experience in the plant and the field. This important balance between theory and practice insures our customers a know-how that "money can't buy."

HILL, HUBBELL and COMPANY

Factory Applicators of Pipe Coatings and Wrappings

DIVISION OF GENERAL PAINT CORPORATION

3091 Mayfield Road • Cleveland 18, Ohio

LEADER IN PIPE PROTECTION

FOR MORE THAN A QUARTER CENTURY

Niagara Mohawk Opens New Plant

THE Niagara Mohawk Power Corporation recently began operation of a hydro-electric generating plant on the Raquette river at South Colton, New York.

The station is one of five new Niagara Mohawk plants on the river. The plant houses a turbo-generator which produces power at 11,500 volts, which will be stepped up to 115,000 volts for transmission over the corporation's lines.

Earl J. Machold, president, said the five-station project was part of a postwar expansion program on which the corporation plans to spend $400,000,000. He said that by the end of 1955 the program would increase the number of the system's generating plants to ninety-three and bring its total power resources to 2,775,000 kilowatts.

JCP&L Opens New Station

A NEW 115,000-volt electric substation has been energized at the Jersey Central Power & Light Company's electric generating station in Sayreville, Clyde A. Mullen, vice president in charge of operations, announced recently. The project completes another step in the company's program of increasing its transmission system from 69,000 to 115,000 volts.

The new substation is actually a switching station, Mr. Mullen explained, tying in JCP&L's northern division with its central and coast divisions. It also ties in the coast and central divisions, through a substation at Whippany in the northern division, with the New Jersey Power & Light Company at West Wharton and the Public Service Electric & Gas Company at Roseland.

Eventually, however, it will also serve as a substation, distributing power from the new addition at the Raritan River station now under construction and scheduled for completion next year. It will also form the northern terminal for the 115,000-volt tie-in with the proposed Lakewood substation, the next step in the increased voltage changeover.

Built at a cost of about $640,000, the new unit has been under construction for more than two years.

Greater Production Claimed For New "Payloader" Model

THE Frank G. Hough Company h announced another addition to i line of torque - converter - drive "Payloader" tractor-shovels with t model HRC, a 4-wheel-drive unit wi bucket capacity of 1 cubic yard struc load and 1¼ cubic yard payloa (heaped).

This new model is available wi either gas or diesel engine and equipped with power-steering for ea of operation and maneuverability.

Another noteworthy feature, a cording to the manufacturer, is t Hough heavy-duty full-reversi transmission which provides fou speed ranges in either direction.

Greater production resulting fro faster operation is claimed for th new "Payloader" tractor-shovel as t result of the new torque-convert drive.

Full details can be obtained fro your "Payloader" Distributor from the manufacturer, The Fra G. Hough Co., 958 Seventh stree Libertyville, Illinois.

A-C Releases New Condenser Bulletin

DESIGN and engineering feature of Allis-Chalmers condensers and fa cilities employed in their manufactur are described in a new 24-page bu letin released by the company.

The bulletin includes illustration of many types of condensers as buil by Allis-Chalmers — conventiona single elbow and twin inlet—alon with sketches showing the many fea tures of the company's multi-stea path condensers.

Also described in the bulletin ar backwash systems for single and two pass condensers to keep units free o debris, and air removal equipment de signed specifically for steam con denser service such as single an multiple-stage steam jet ejectors an motor driven mechanical vacuu pumps.

Condensate and circulating wate pumps in both horizontal and vertica design and motors for pump drive are also covered in the bulletin "Steam Condensers," 19B7987, cop ies of which are available on reques from Allis-Chalmers Manufacturin Company, 965 S. 70th St., Milwaukee Wisconsin.

REPRINTS

of Feature Articles in

PUBLIC UTILITIES FORTNIGHTLY

Reprints of feature articles in recent issues of PUBLIC UTILITIES FORTNIGHTLY are listed here as a special service.

A New Look at Federal Power Policy
by Clarence A. Davis, February 4, 1954

The Challenge of the West Coast's Dynamic Growth
by Jane Eshleman Conant, February 18, 1954

Creative Technique in Executive Development
by Herbert H. Jacobs, February 18, 1954

Putting Human Relations Research to Work
by Robert E. Schwab, March 4, 1954

The Need for Recognizing Fair Value
by Paul Grady, March 18, 1954

Practicalities in Rate Making Today
by Justin R. Whiting, April 1, 1954

The Adjustment Clause, an Aid to Rate Regulation
by Orrin S. Vogel, April 15, 1954

New Light on an Old Subject
by David E. Goggin, April 15, 1954

Niagara Should Be Developed Through Private Enterprise
by Homer E. Capehart, April 29, 1954

Traffic Crisis—Is Subsidized Parking the Answer?
by George W. Keith, April 29, 1954

What Do the Panhandle and Phillips Cases Mean?
by Edward Falck, May 27, 1954

Public Relations Techniques
by Harold Brayman, July 8, 1954

Prices for the above, as well as for reprints of other articles, will be supplied promptly upon request. Write to: Reprint Department, Public Utilities Fortnightly, Munsey Building, Washington 4, D. C.

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• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design, and construction. » »

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*Fortnightly advertisers not in this issue.

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And this is the SPECIAL ADVANTAGE STICKER which dozens of companies are using this month on the front cover of Electrified Industry. →

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Customers are reminded of you and of the SPECIAL ADVANTAGES of being on your lines. In addition your stickers help them route your messages to additional readers.

Some companies make up stickers which carry their own slogan (a good idea). Others have Teddy Kilowatt remind the readers that electric power is their willing servant.

Power salesmen make friends for your companies and add to your "net divisable." Years ago they decided that they needed help to overcome the effects of the competitive power, diesel-and-steam, agin-the-utilities magazines that they saw on their customers desks. They helped create the picture magazine which tells the true story that electricity, properly used, is worth many times its cost.

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By using Electrified Industry they are able to maintain better-than-ever customer contact and increase the net revenue of the utilities.

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World's most modern trucks!

Yours only with DODGE TRUCK Advanced POWER-DOME V-8

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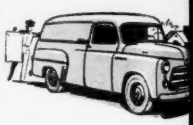
You travel in high style! You get the sleekest, lowest built lines of any truck . . . smart new colors inside and out! And these are the easiest handling trucks of all!



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